

IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT
WEST PALM BEACH, FLORIDA

RECORD ON APPEAL FROM THE CIRCUIT
COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION

ERNESTO BEHRENS,
APPELLANT

CASE NUMBER

98-5739 CF10A

STATE OF FLORIDA
APPELLEE

APPEAL NUMBER

4D00-4484

VOL. II

RECEIVED
OFFICE OF THE ATTORNEY GENERAL
OCT 15 2001
CRIMINAL DIVISION
WEST PALM BEACH

CAREY HAUGHWOUT, 15TH PUBLIC DEFENDER
ATTORNEY FOR APPELLANT

GEORGINA JIMENEZ-AROSA, ASST. ATTY. GENERAL
ATTORNEY FOR APPELLEE

INDEX TO RECORD ON APPEAL
APPELLATE DIVISION

CASE NO
98-5739 CF10A

ERNESTO BEHRENS

APPEAL NO
00-4484

DATE OF FILING	KIND OF INSTRUMENT	PAGES
	<u>VOL. II</u>	
2-7-00	ORDER DEF. NO BOND HOLD	126
2-25-00	ST'S SUPP. DISCOVERY	127
3-13-00	ORDER DECLARING DEF. INDIGENT FOR COSTS	128
"	NOTICE OF APPEARANCE T. TERRELL	129
4-19-00	ORDER ON MOTION FOR DISCHARGE	130
5-19-00	AFFIDAVIT OF PROSECUTING ATTY FOR CERTIFICATE TO PROCURE OUT-OF-STATE WITNESS	131 - 135
5-24-00	ST'S SUPP. DISCOVERY	136
6-1-00	ST'S SUPP. DISCOVERY	137 - 138
6-1-00	ST'S NOTICE OF INTENT TO OFFER EVIDENCE OF OTHER CRIMES	139 - 140
6-7-00	DEF'S AMENDED WITNESS LIST	141 - 142
"	DEF'S NOTICE OF ALIBI	143
6-9-00	ORDER ON MOTION TO COMPEL PHOTO NEGATIVES	144
6-23-00	DEMAND FOR SPEEDY TRIAL	145
6-30-00	ST'S SUPP. DISCOVERY	146
"	ST'S SUPP. DISCOVERY	147
7-5-00	DEF'S AMENDED NOTICE OF ALIBI	148
7-6-00	DEF'S M/IN LIMINE	149 - 151
7-10-00	COPY OF HEARING TRANSCRIPT	152 - 161
7-11-00	ST'S SUPP. DISCOVERY	162
7-19-00	CERT. OF JUDGE REQUESTING STATE FOR ATTENDANCE OF OUT-OF-STATE WITNESS	163 - 166

INDEX TO RECORD ON APPEAL
APPELLATE DIVISION

CASE NO
98-5739 CF10A

ERNESTO BEHRENS

APPEAL NO
00-4484

DATE OF FILING	KIND OF INSTRUMENT	PAGES
7-25-00	ST'S REQUEST FOR JUDICIAL NOTICE	167 - 168
7-28-00	DEF'S MOTION TO STRIKE STATE'S REQUEST	169 - 170
7-28-00	DEF'S AMENDED NOTICE OF ALIBI	171
7-31-00	ST'S RESPONSE TO DEF'S M/TO STRIKE ST'S REQUEST FOR JUDICIAL NOTICE	172 - 173
7-31-00	DEF'S SUPP. AMENDED WITNESS LIST	174
8-2-00	ST'S SUPP. DISCOVERY	175
8-4-00	ST'S SUPP. DISCOVERY	176
8-4-00	DEF'S MEMO TO JUDGE HOROWITZ	177 - 181
8-7-00	ST'S SUPP. DISCOVERY	182
8-9-00	ST'S SUPP. DISCOVERY	183
8-9-00	DEF'S MEMORANDUM TO JUDGE	184 - 188
8-9-00	HEARING PROCEEDING WILLIAMS RULE	189
8-25-00	DEF'S NOTICE OF EXPIRATION OF TIME FOR SPEEDY	190
8-29-00	ORDER GRANTING ST'S MOTION	191
"	ORDER TO DEF.	192
9-7-00	ST'S SUPP. DISCOVERY	193
9-11-00	DEF'S M/FOR DISCHARGE	194
"	DEF'S M/IN LIMINE	195 - 197
9-14-00	RECORD OF TRIAL PROCEEDINGS	198 - 199
9-14-00	EXHIBIT LIST - ORIGINAL EXHIBITS FORWARDED TO 4TH DCA FOR REVIEW	200 - 202
9-14-00	JURY QUESTIONS	203 - 204
"	VERDICT FORMS	205 - 206
"	ORDER ON COSTS	207
"	CLERK'S TRIAL NOTES	208 - 209

INDEX TO RECORD ON APPEAL
APPELLATE DIVISION

CASE NO

98-5739 CF10A

APPEAL NO

ERNESTO BEHRENS

00-4484

DATE OF FILING	KIND OF INSTRUMENT	PAGES
9-19-00	STATE'S M/TO IMPOSE SENTENCE WHICH IS UPWARD DEPARTURE FM RECOMMENDED GUIDELINE SENTENCE	210 - 211
9-25-00	ST'S M/TO COMPEL STD FINGERPRINTS	212 - 213
9-28-00	ST'S M/IN LIMINE	214
9-26-00	ORDER FOR REIMBURSEMENT	215
10-2-00	ST'S SUPP. DISCOVERY	216
10-5-00	ST'S SUPP. DISCOVERY	217
10-5-00	ST'S REQUEST FOR JUDICIAL NOTICE	218 - 219
10-6-00	ST'S SUPP. DISCOVERY	220
10-10-00	ST'S MEMOR. OF LAW IN SUPPORT OF M/LIMINE	221 - 227
10-13-00	ORDER DENYING ST'S M/IN LIMINE	228 - 229
10-24-00	JOINT STIPULATION FOR SUBSTITUTION OF COUNSEL	230
10-24-00	ORDER FOR REIMBURSEMENT	231
10-26-00	ORDER FIXING COMPENSATION OF EXPERT WITNESS	232
10-27-00	DEF'S M/FOR JURY INTERVIEWS & AFFIDAVIT	233 - 234
11-13-00	HEARING PROCEEDING EVID. HRG 3.850	235
"	EXHIBIT LIST	236
"	DISPO SLIP - SENTENCE	237
11-13-00	JUDGMENT/SENTENCE	238 - 246
"	SENTENCING GUIDELINES	247 - 248
"	JUDGMENT & RESTITUTION ORDER	249 - 250
"	ORDER FINDING DEF. SEXUAL PREDATOR	251
"	ORDER FINDING DEF. SEXUAL PREDATOR	252
"	ORDER ON UPWARD DEPARTURE OF SENTENCE	253

INDEX TO RECORD ON APPEAL
APPELLATE DIVISION

CASE NO
98-5739 CF10A

ERNESTO BEHRENS

APPEAL NO
00-4484

DATE OF FILING	KIND OF INSTRUMENT	PAGES
12-6-00	ORDER FOR REIMBURSEMENT	254 - 255
9-21-00	DEF'S MOTION FOR NEW TRIAL	256 - 257
10-27-00	DEF'S AMENDED M/FOR NEW TRIAL	258 - 260
11-28-00	DEF'S SUPPLEMENTAL M/FOR NEW TRIAL	261 - 267
12-15-00	ORDER DENYING M/FOR NEW TRIAL	268
11-28-00	DEF'S M/TO CORRECT PRIOR RECORD	269 - 272
11-30-00	JOINT STIPULATION FOR SUB. OF COUNSEL	273
12-1-00	MOTION TO RESCHEDULE HEARING	274
12-1-00	ORDER GRANTING MOTION	275
12-1-00	MOTION TO MAINTAIN DEF. IN COUNTY JAIL	276
12-1-00	ORDER GRANTING MOTION	277
12-1-00	ORDER GRANTING JOINT STIPULATION FOR SUBST.	278
12-5-00	DEF'S NOTICE OF APPEAL	279
11-28-00 & 12-5-00	MOTION & ORDER GRANTING M/INDIGENCY & APPT. 17TH P.D. FOR APPEAL	280 - 281
"	STATEMENT OF JUDICIAL ACTS	282 - 283
"	DESIGNATION TO CT REPT.	284 - 285
"	DIRECTIONS TO CLERK	286 - 287
12-13-00	NOTICE OF APPEAL	288
1-25-01	4DCA ORDER GRANTING M/EXTENSION OF TIME	289
2-12-01	" " "	290
2-16-01	4DCA ORDER TO RELINQUISH JURISDICTION	291
3-16-01	DESIGNATION TO COURT REPORTER	292
"	DESIGNATION TO COURT REPORTER	293
"	AMENDED DESIGNATION TO CT REPT	294
3-23-01	4DCA ON M/EXTEND RELINQUISHMENT OF JURISD.	295
8-25-01	CORRECTED DESIGNATION TO CT REPT.	296 - 298

INDEX TO RECORD ON APPEAL
APPELLATE DIVISION

CASE NO
98-5739 CF10A

ERNESTO BEHRENS

APPEAL NO
00-4484

DATE OF FILING	KIND OF INSTRUMENT	PAGES
5-3-01	4DCA ORDER ON RELINQUISH OF JURISD.	299
5-3-01	NOTICE OF FILING OF TRANSCRIPT (7-10-00)	300 - 310
5-8-01	DIRECTIONS TO CLERK	311
6-8-01	4DCA ORDER GRANTING EXT. OF TIME	312
7-10-01	" "	313
8-20-01	4DCA ORDER FOR J. BACKMAN	314
*****	CASE PROGRESS NOTES	315 - 324
10-11-01	CERTIFICATE OF THE CLERK ...	

LIST OF TRANSCRIPTS ON NEXT PAGE.....

INDEX TO RECORD ON APPEAL
APPELLATE DIVISION

CASE NO
98-5739 CF10A

ERNESTO BEHRENS

APPEAL NO
00-4484

DATE OF FILING	KIND OF INSTRUMENT	PAGES
	<u>FOLLOWING LIST OF COURT REPORTER'S</u> <u>TRANSCRIPTS</u>	
	<u>VOL. I</u>	
8-4-99	HEARING	1 - 15
	<u>VOL. II</u>	
11-2-99	HEARING	1 - 14
	<u>VOL. III</u>	
11-30-99	HEARING	1 - 11
	<u>VOL. IV</u>	
12-17-99	EVID. HRG.	1 - 83
	<u>VOL. V</u>	
3-24-00	HEARING	1 - 4
	<u>VOL. VI</u>	
6-13-00 & 6-23-00	HEARING	1 - 12
	<u>VOL. VII</u>	
6-29-00	AFFIDAVIT FM CT REPT	*
	<u>VOL. VIII</u>	
6-30-00	HEARING	1 - 9
	<u>VOL. IX</u>	
7-5-00	AFFIDAVIT	*
	<u>VOL. X</u>	
7-18-00	HEARING	1 - 10

INDEX TO RECORD ON APPEAL
APPELLATE DIVISION

CASE NO

98-5739 CF10A

APPEAL NO

ERNESTO BEHRENS

00-4484

DATE OF FILING	KIND OF INSTRUMENT	PAGES
	<u>LIST OF COURT REPORTER'S TRANSCRIPTS</u>	
	<u>VOL. XI</u>	
7-21-00	HEARING	1 - 19
	<u>VOL. XII</u>	
8-9-00	JURY TRIAL	1 - 169
	<u>VOL. XIII</u>	
8-10-00	JURY TRIAL	170 - 339
	<u>VOL. XIV</u>	
8-10-00	JURY TRIAL	340 - 374
	<u>VOL. XV</u>	
8-29-00	HEARING	1 - 7
	<u>VOL. XVI</u>	
9-11-00	JURY TRIAL	377 - 452
9-12-00	JURY TRIAL	531 - 533
	<u>VOL. XVII</u>	
9-12-00	JURY TRIAL	645 - 774
	<u>VOL. XVIII</u>	
9-12-00	JURY TRIAL	777 - 801
9-13-00	JURY TRIAL	832 - 850
	<u>VOL. 19</u>	
9-13-00	JURY TRIAL	851 - 1056
9-14-00	JURY TRIAL	1057 - 1174
	<u>VOL. 20</u>	
9-14-00	JURY TRIAL	1175 - 1337

INDEX TO RECORD ON APPEAL
APPELLATE DIVISION

CASE NO

98-5739 CF10A

APPEAL NO

ERNESTO BEHRENS

00-4484

DATE OF FILING	KIND OF INSTRUMENT	PAGES
	<u>COURT REPORTER'S TRANSCRIPTS</u>	
	<u>VOL. 21</u>	
11-2-00	HEARING	1 - 38
	<u>VOL. 22</u>	
11-13-00	HEARING	1 - 192

☒ 17th Judicial Circuit in and for Broward County
☐ In the County Court in and for Broward County

CLOCK IN
Filed in Open Court,
ROBERT E. LOCKWOOD, CLERK

DIVISION:

☒ Criminal
☐ Traffic
☐ Other

ORDER

ON 2-02-00

BY [Signature]

THE STATE OF FLORIDA VS. Ernesto Behrens

CASE NUMBER

DEFENDANT

98-5739CF10A

CHARGE I - Sexual Battery - Armed
II - Burg Dwell / w/ Battery

The above defendant, arrest number
BS98 6793 ~~074~~ March 29, 1998, should be held
No Bond hold on the above 2 charges
only.

All other charges have been disposed
of at ~~this~~ time.

DONE AND ORDERED THIS 7th DAY OF February, 2000, IN

BROWARD COUNTY, FLORIDA.

JUDGE

[Signature]
Rothschild

COPIES: BSO - SAO

C

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA, 324 : CASE NO: 98-5739CE10A
Plaintiff, : JUDGE: ROTHSCHILD
vs. : STATE'S SUPPLEMENTAL DISCOVERY
ERNESTO BEHRENS, :
Defendant. :

JAN 25 1999
14
CIRCUIT COURT
BROWARD COUNTY, FL

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to the provisions of Rule 3.220(b)(1)(A), of the Florida Rules of Criminal Procedure, as supplement to the State's previous submission(s) of discovery herein, submits the following amendments(s) or addition(s):

ADD WITNESS:

RANAJIT CHAKRABORTY, Ph.D.
HUMAN GENETICS CENTER
UNIVERSITY OF TEXAS SCHOOL OF PUBLIC HEALTH
6901 BERTNER AVE.
ROOM SOUTH 244
HOUSTON, TX 77030

I HEREBY CERTIFY that a true copy hereof has been furnished by hand delivery this 25TH day of FEBRUARY, 2000 to: TYRONE A. TERRELL, ESQ., 1895 WEST COMMERCIAL BLVD., SUITE 135, FT. LAUD., FL 33309

MICHAEL J. SATZ
State Attorney

By: Dennis Siegel
DENNIS SIEGEL, FL BAR#258131
Assistant State Attorney
201 SE Sixth Street, Rm. 568
Fort Lauderdale, FL 33301
Telephone: (954) 831-6933
FAX: (954) 831-6936

☐ 17th Judicial Circuit in and for Broward County
☐ In the County Court in and for Broward County

CLOCK IN
Filed in Open Court,
ROBERT E. LOCKWOOD, CLERK

DIVISION:

☐ Criminal
☐ Traffic
☐ Other

ORDER

ON MAR 13 2000

BY [Signature]

THE STATE OF FLORIDA VS.

CASE NUMBER

ERNESTO BEHRENS

DEFENDANT

98-5739 CF10A

CHARGE SEXUAL BATTERY

The defendant is hereby declared indigent for the cost of discovery, hiring experts, testing, and investigations. All costs shall be subject to the administrative Rules of the Chief Judge.

DONE AND ORDERED THIS 10th DAY OF March, 2000, IN

BROWARD COUNTY, FLORIDA.

[Signature]
JUDGE

Rothschild

COPIES: BSO - SAO

128

☒ 17th Judicial Circuit in and for Broward County
☐ In the County in and for Broward County

CLOCK IN

DIVISION:
☒ Criminal
☐ Traffic
☐ Other

NOTICE OF APPEARANCE

THE STATE OF FLORIDA VS Ernesto Behrens

CASE NUMBER

PLAINTIFF

DEFENDANT

98-5739C F10A

JUDGE: Rothschild

TO THE CLERK OF THE ABOVE COURT:

YOU WILL PLEASE ENTER MY APPEARANCE OF RECORD FOR THE DEFENDANT
IN THE ABOVE STYLED CAUSE.

DATED THIS 13 DAY OF March, 2000.
nunc pro tunc to 12-3-99
ATTORNEY FOR DEFENDANT

PRINT NAME Tyrone A. Terrell

ADDRESS 1895 W. Comm Blvd Ste 135

CITY, STATE, ZIP Ft. Lauderdale, FL 33309

PHONE 489-2204

BAR NUMBER 0077976

I HEREBY CERTIFY THAT I SERVED A COPY OF THIS NOTICE ON THE STATE
ATTORNEY OF BROWARD COUNTY, FLORIDA, BY ☐ MAIL ☐ DELIVERY THIS
____ DAY OF _____, 19 ____.

Ty Terrell
ATTORNEY OF RECORD

4/20 KK

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

CASE NO: 98-001300CFA03
JUDGE: WENNET

2000 APR 19 PM 1:40
CLERK
CLERK
CLERK
PALM BEACH CO. CT. CLERK
PALM BEACH CO. FL.

ORDER

Defendant having presented to this Court a **Motion for Discharge**, and the Court having examined said Motion and otherwise being fully advised in the premises, it is therefore, **ORDERED AND ADJUDGED** that:

1. Defendant was taken into custody and appeared for magistrate before Judge Lynch on March 28, 1998. During the magistrate hearing, the Defendant was formally informed of the charges of Burglary with assault and burglary while armed and was held without bond.
2. The Defendant is entitled to be brought to trial within 175 days from the date of his magistrate hearing when he was formally notified of his criminal charges pursuant to Fla. R. Crim. P. 3.191(a)(d) and (e)
3. That trial did not commence within the time limits provided for in Rule 3.191(a), and Defendant is, therefore, entitled to the appropriate remedy as set forth in Fla. R. Crim. P. 3.191(p).
4. The State Attorney concedes that it failed to bring Defendant to trial within the time limits prescribed by law.

WHEREFORE, said Motion is hereby **GRANTED**, AND THE CHARGES AGAINST THE DEFENDANT ARE DISCHARGED FOREVER.

DONE AND ORDERED at ~~Fort Lauderdale~~ ^{Palm Beach}, Broward County, Florida on this 19th day of April, 2000.

HON. RICHARD WENNET
CIRCUIT COURT JUDGE

Copies furnished to: State Attorney

CLERK
CLERK
CLERK
PALM BEACH CO. CT. CLERK
PALM BEACH CO. FL.

2000 MAY 19 PM 2:52

Received
5-24-00

5-19-00

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 98-5379 CF10(A)
JUDGE: RONALD ROTHSCILD

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

**AFFIDAVIT OF PROSECUTING ATTORNEY FOR CERTIFICATE
TO PROCURE OUT-OF-STATE WITNESS**

STATE OF FLORIDA :
: SS
COUNTY OF BROWARD :

DENNIS SIEGEL, being duly sworn, deposes and states that:

1. He is a duly appointed Assistant State Attorney for the Seventeenth Judicial Circuit of the State of Florida, in and for Broward County, Florida.
2. This Affidavit is made in support of an application for a certificate to procure the attendance of a witness from without the State of Florida in a criminal proceeding pursuant to the Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings. Chapter 942, Florida Statutes.
3. On June 26th, 2000, Defendant Ernesto Behrens is scheduled to be tried in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, for the crimes of Sexual Battery-Armed, in violation of F.S.794.011(3), and Burglary Of A Dwelling With A Battery, in violation of F.S.810.02(2), as shown by the certified copy of the Information filed in this case which is annexed hereto and incorporated by reference herein.

STATE OF FLORIDA V. ERNESTO J. BEHRENS

Case No. 98-5379 CF10(A)

Judge: RONALD ROTHSCHILD

AFFIDAVIT OF PROSECUTING ATTORNEY
TO PROCURE OUT-OF-STATE WITNESS

Page 2 of 5

4. The crime of Sexual Battery-Armed is a life felony under the laws of the State of Florida and is punishable by up to life imprisonment in state prison. Burglary Of A Dwelling With A Battery is a first degree felony punishable by life which is punishable by up to life imprisonment in the state penitentiary.
5. Michelle Neuman resides at 7 Laurel Terrace, Sparta, New Jersey 07871. Ms. Neuman is the ex-wife of the Defendant and was married to the Defendant from 1986 through 1997.
6. The State of Florida's case against the Defendant is based in substantial part upon forensic deoxyribonucleic acid (DNA) testing. The sheet in the victim's bedroom upon which the sexual battery occurred was examined by a forensic DNA analyst employed by the Broward County Sheriff's Office Crime Laboratory, and suspect DNA was extracted from the sheet. At a later time, an oral swab secured from the Defendant was sent to the Broward County Sheriff's Office Crime Laboratory and DNA was extracted from the oral swab. A comparison was made between the DNA profile extracted from the sheet and the DNA profile of the Defendant, and it was the conclusion of the Broward Sheriff's Office Crime Laboratory and Dr. Martin Tracey, a population geneticist employed as a professor at Florida International University, that there was a one in greater than five billion chance of finding another individual at random in the population who had the same DNA profile as that extracted from the DNA extracted from the sheet upon which the sexual battery occurred.
7. The defense has listed Dr. Leslie Lieberman, an anthropologist employed as a professor at the University of Florida, as a defense witness. Dr. Lieberman is prepared to testify that the population frequency statistics compiled by the crime laboratory and Dr. Tracey are incorrect, because she asserts that the Defendant is a descendant of a population substructure because his father's family resided in a small enclave in Venezuela called Colonia Tovar for an extended period of time. Dr. Lieberman further stated that she studied a work which traced the history of Colonia Tovar and could not locate anyone with a surname of Behrens who resided in that enclave. She has testified, however, that she was informed that Behrens has not always been the family surname, and that the family had a different surname in the past which could have been Schick (ph.). Dr. Lieberman

STATE OF FLORIDA V. ERNESTO J. BEHRENS

Case No. 98-5379 CF10(A)

Judge: RONALD ROTHSCHILD

AFFIDAVIT OF PROSECUTING ATTORNEY

TO PROCURE OUT-OF-STATE WITNESS

Page 3 of 5

also contended that the Defendant's paternal grandparents were first cousins before they married. Dr. Leiberman opined, based on this information gathered solely from the Defendant and/or his girlfriend, that the population frequency statistics were erroneously calculated by Dr. Tracey and the crime laboratory.

8. Ms. Neuman has given a deposition, in a different case in which the Defendant was charged with sexual battery, in which she stated that she has discussed with the Defendant his ancestry. She stated that she did not know when the Defendant's first paternal ancestor came to Venezuela from Germany. She stated that she visited the enclave of Colonia Tovar with the Defendant during the course of their marriage. She stated that she did not know if any member of the Defendant's paternal family ever resided in that enclave, and that the Defendant never told her that any member of his father's family ever resided there. She further stated that no other member of the Defendant's family had ever advised her that any person in the Defendant's father's family had ever resided in the enclave. Furthermore, neither the Defendant nor any other member of his family had ever advised her that an ancestor ever had a surname other than Behrens. She further testified that she never heard any mention of the name of Schick (ph) in connection with the Behrens family. Furthermore, she stated that she had never been told that any member of the Defendant's family had ever married a relative, and had never been told that the Defendant's paternal grandparents were cousins when they married.
9. Because Ms. Neuman's testimony would undermine the credibility of the assertions upon which Dr. Leiberman's opinions are based, Ms. Neuman is in the possession of testimony that vitally bears on the issues to be resolved at the trial of this matter, and such testimony is not cumulative and cannot be obtained from any other available witness. Accordingly, Ms. Neuman is a material witness in and at the trial of this matter.
10. The State of New Jersey makes provision by its laws for commanding persons within its borders to attend and testify in criminal proceedings and criminal trials in the State of Florida. New Jersey Statutes Annotated 2A:81-18 through 2A:81-22.

STATE OF FLORIDA V. ERNESTO J. BEHRENS

Case No. 98-5379 CF10(A)

Judge: RONALD ROTHSCHILD

AFFIDAVIT OF PROSECUTING ATTORNEY

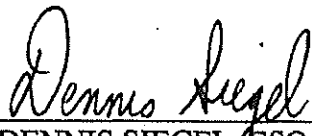
TO PROCURE OUT-OF-STATE WITNESS

Page 4 of 5

11. The State of Florida will tender to Ms. Neuman the fees and allowances authorized for witnesses by Florida Statute 942.03(2) and will provide, at State expense, an allowance for meals and accommodations for Ms. Neuman if required.

WHEREFORE, the undersigned Assistant State Attorney respectfully requests this Honorable Court to issue its certificate, pursuant to Florida 942.03, certifying to the Superior Court of New Jersey, Law Division-Sussex County, Criminal Part, that Michelle Neuman is a material witness at the trial of this matter. The undersigned Assistant State Attorney further requests this Honorable Court recommend that process issue from the Superior Court of New Jersey, Law Division-Sussex County, Criminal Part, commanding Michelle Neuman to attend and testify as a witness beginning at the hour of 9:00 a.m. on Monday, July 3, 2000, or as soon thereafter as she may be heard, in the Circuit Court of the Seventeenth Judicial Circuit In And For Broward County, Florida at the trial of this matter before the Honorable Ronald Rothschild, Circuit Court Judge, Room 6870, Broward County Courthouse, Fort Lauderdale, Florida, and that Ms. Neuman be required to continue to attend said trial and to testify as a witness until she has completed her testimony, or for a period not to exceed 8 days commencing on July 3, 2000, at 9:00 a.m.

By:



DENNIS SIEGEL, ESQ.

Assistant State Attorney
Florida Bar #258131

STATE OF FLORIDA V. ERNESTO J. BEHRENS

Case No. 98-5379 CF10(A)

Judge: RONALD ROTHSCHILD

AFFIDAVIT OF PROSECUTING ATTORNEY

TO PROCURE OUT-OF-STATE WITNESS

Page 5 of 5

STATE OF FLORIDA :
:SS
COUNTY OF BROWARD :

FILED
2003 MAY 19 PM 12:14
CLERK OF DISTRICT COURT
BROWARD COUNTY, FL.

SWORN TO AND SUBSCRIBED before me this 18th day of May, 2000.

SIGNATURE OF NOTARY Martha N. Haase

TYPE NAME OF NOTARY MARTHA N. HAASE

NOTARY PUBLIC, STATE OF FLORIDA

COMMISSION NUMBER: CC810824

COMMISSION EXPIRATION: APRIL 6, 2003



Martha N. Haase
MY COMMISSION # CC810824 EXPIRES
April 6, 2003
BONDED THRU TROY FAIN INSURANCE, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been
furnished by U.S. Mail/hand delivery this _____ day of May, 2000, TO: TYRONE A. TYRELL,
ESQ., 1895 West Commercial Boulevard, Suit 135, Fort Lauderdale, Florida 33309.

MICHAEL J. SATZ

State Attorney

By:

Dennis Siegel
DENNIS SIEGEL ESQ.

Assistant State Attorney

Florida Bar #258131

201 S.E. Sixth Street, Suite 568

Fort Lauderdale, Florida 33301

(954) 831-6933

FAX: (954) 831-6936

6-21
IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

: CASE NO: 98-5739CF10A

Plaintiff,

: JUDGE: ROTHSCHELD

vs.

: STATE'S SUPPLEMENTAL DISCOVERY

ERNESTO BEHRENS,

Defendant.

:

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to the provisions of Rule 3.220(b)(1)(A), of the Florida Rules of Criminal Procedure, as supplement to the State's previous submission(s) of discovery herein, submits the following amendments(s) or addition(s):

TRANSCRIPT OF STATEMENTS OF ALLEN KRASSNER
AND SIRU ANDELIN

I HEREBY CERTIFY that a true copy hereof has been furnished by hand delivery this 23RD day of MAY, 2000 to: TYRONE TERRELL, ESQ., 1895 W. COMMERCIAL BLVD., SUITE 135, FT. LAUD., FL 33309

MICHAEL J. SATZ

State Attorney

By: Dennis Siegel

DENNIS SIEGEL FL BAR#258131

Assistant State Attorney

201 SE Sixth Street, Rm. 568

Fort Lauderdale, FL 33301

Telephone: (954) 831-6933

FAX: (954) 831-6936

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

6-13
STATE OF FLORIDA,

CASE NO:98-5739CF10A

JUDGE: ROTHCHILD

Plaintiff,

vs.

STATE'S SUPPLEMENTAL DISCOVERY

ERNESTO BEHRENS

Defendant.

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to the provisions of Rule 3.220(b)(1)(A), of the Florida Rules of Criminal Procedure, as supplement to the State's previous submission(s) of discovery herein, submits the following amendments(s) or addition(s):

ADDITIONAL WITNESSES AND REPORTS:

MICHELLE NEWMAN 7 LAUREL TERRACE , SPARTA, NJ 07871

██████████ C/O SAO

DET. OLE OLSEN PALM BEACH SHERIFF'S OFFICE

DEP. THOMAS TARR PALM BEACH SHERIFF'S OFFICE

DET. SGT. R. COOK, SR PALM BEACH SHERIFF'S OFFICE

CORP. KALMUS, PALM BEACH SHERIFF'S OFFICE

DEBBIE GLIDEWELL, PALM BEACH SHERIFF'S OFFICE

PALM BEACH COUNTY SHERIFF'S OFFICE OFFENSE REPORT AND 8
SUPPLEMENTS,

DNA DATA SHEET, CRIME LABORATORY REPORT, PHOTOGRAPHIC LINE-UP

STATE'S SUPPLEMENTAL DISCOVERY CONT.

2

ERNESTO BEHRENS

98-5739CF10A

ROTHCHILD

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail/hand delivery this 1st day of JUNE A.D. 2000. TO TYRONE A. TYRELL, ESQ. 1895 WEST COMMERCIAL BLVD. SUITE 135 FT LAUDERDALE, FL 33309

MICHAEL J. SATZ

State Attorney

By: Dennis Siegel

DENNIS SIEGEL

Assistant State Attorney

FL Bar#258131

Broward County Courthouse

201 SE Sixth Street, Rm. 568

Fort Lauderdale, Florida 33301

Telephone: (954) 831-6933

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

6-83 CASE NO: 98-5739 CF10(A)

JUDGE: RONALD ROTHSCILD

STATE OF FLORIDA,

Plaintiff,

VS.

ERNESTO BEHRENS,

Defendant.

RECEIVED
17th CIRCUIT COURT
BROWARD COUNTY, FL.
2000 JUN -1 AM 10:43
FELONY

NOTICE OF INTENT TO OFFER EVIDENCE OF OTHER CRIMES.
PURSUANT TO SECTION 90.404(2)(b)(1), FLORIDA EVIDENCE CODE

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and pursuant to Section 90.404 (2)(b)(1) of the Florida Evidence Code files this its Notice of Intent to offer evidence of other criminal offenses of the Defendant, more particularly described as follows:

1. On August 9, 1996, in Palm Beach County, Florida the Defendant did enter the residence of [REDACTED] located at [REDACTED] without her permission, with the intent to commit the offense of sexual battery therein and in the process thereof did commit a battery upon [REDACTED].
2. On August 9, 1996, in Palm Beach County, Florida, the Defendant did masturbate himself in the presence of [REDACTED] in her bedroom.
3. On August 9, 1996, in Palm Beach County, Florida, the Defendant did commit a sexual battery upon [REDACTED] by causing his mouth and/or tongue to penetrate or unite with the sexual organ of [REDACTED], and in the process thereof the Defendant used or displayed a weapon, to-wit: scissors.
4. On August 9, 1996, in Palm Beach County, Florida, the Defendant did commit sexual battery upon [REDACTED] by causing her to penetrate her vagina with her finger, and in the process thereof the Defendant was armed with a weapon, to-wit: scissors.

STATE OF FLORIDA V. ERNESTO BEHRENS

Case No. 98-5739 CF10(A)

Judge: RONALD ROTHSCHILD

NOTICE OF INTENT TO OFFER EVIDENCE OF OTHER CRIMES.

PURSUANT TO SECTION 90.404(2)(b)(1), FLORIDA EVIDENCE CODE

Page 2 of 2

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. MAIL/ hand delivery this 1st day of June, 2000, to: TYRONE TERRELL, ESQ., 1895 West Commercial Boulevard, Suite 135, Fort Lauderdale, Florida 33309.

MICHAEL J. SATZ

State Attorney

By: 

DENNIS SIEGEL, ESQ.

Florida Bar #258131

Assistant State Attorney

Broward County Courthouse

201 Southeast Sixth Street, Suite 568

Fort Lauderdale, Florida 33301

Telephone: (954) 831-6933

Fax: (954) 831-6936

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
BROWARD COUNTY, STATE OF FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

CASE NO:98-5739CF10A

JUDGE: ROTHSCOLD

DEFENDANT'S AMENDED WITNESS LIST

Defendant in the above cause, through undersigned counsel, pursuant to Fla. R.Cr.P. 3.220(d)(1)(A), furnishes to the State of Florida this written list of witnesses whom the Defendant expects to call at the trial or hearing in this cause:

Dr. Guy Durand
P.O. Box 17927
Plantation, Fl 33318

Det. Archie Moore
1351 Nw 12th Street
Miami, Florida 33125

Dr. Leslie Sue Liberman
P.O. Box 17305
University of Florida
Gainsville, Florida 32611

Det. John Butchko
1351 NW 12th Street
Miami, Florida 33125

Maria Rosales
1042 NW 53rd Street
Pompano Beach, Florida 33064

Det. Steve Geller
451 NW 70th Terrace
Plantation, Florida 33317

Ivette Hernandez
3259 Coral Lakes Drive
Coral Springs, Florida 33065

Det. Brian Hager
451 NW 70th Terrace
Plantation, Florida 33317

Paula Turgeon
2080 NE 26th Street
Lighthouse Point, Florida 33064

Officer D. Farron
451 NW 70th Terrace
Plantation, Florida 33317

Officer Huskisson
451 NW 70th Terrace
Plantation, Florida 33317

Dr. Jin-Xong She
P.O. Box 100275
Gainsville, Florida 32610-0275

Marjorie Hanlon
451 NW 70th Terrace
Plantation, Florida 33317

Det. Mazer 451 NW 70th Terrace
Plantation, Florida 33317

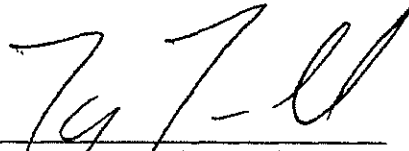
Sharon Hinz
1351 NW 12th Street
Miami, Florida 33123

Jean Swaby
400 NE 4th Street
Ft.Lauderdale, Florida 33317

Officer Dave Young
2801 Coral Springs Drive
Coral Springs, Florida 33065

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the Office of the State Attorney, Broward County Courthouse, Ft. Lauderdale, Florida, this 6th day of June, 2000.

A handwritten signature in black ink, appearing to read 'Ty T-ell', written over a horizontal line.

Tyrone A. Terrell, Esquire
Attorney for the Defendant
Florida Bar #0077976
1895 West Commercial Boulevard
Suite 135
Ft. Lauderdale, FL 33309
Phone: (954) 489-2204/Fax: 489-0637

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
BROWARD COUNTY, STATE OF FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

6-13
CASE NO.: 98-5739CF10A

JUDGE: ROTHSCILD

DEFENDANT'S NOTICE OF ALIBI

YOU ARE HEREBY notified that the Defendant intends to claim the defense of alibi at the trial hereof and says:

1. At the exact date and time of the alleged offense, the Defendant was at the following location:

750 NW 91st Terrace
Plantation, Florida

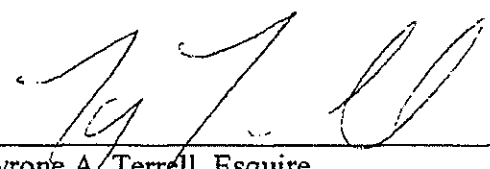
2. The Name and address of the witness upon whom the Defendant may call to establish the alibi is:

Paula Turgeon
2080 NE 26th Street
Lighthouse Point, Fl 33064.

3. Pursuant to Fla. R. Cr. P. 3.200, you are directed to file and serve upon the Defendant, within five (5) days from receipt thereof, the name(s) and address(es) of any person(s) more particularly known to the State Attorney whom the State proposes to offer in rebuttal of said alibi defense.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the Office of the State Attorney, Broward County Courthouse, Ft. Lauderdale, Florida, this 6th day of June, 2000.



Tyrone A. Terrell, Esquire
Attorney for the Defendant
Florida Bar #0077976
1895 West Commercial Boulevard
Suite 135
Ft. Lauderdale, FL 33309
Phone: (954) 489-2204/Fax: 489-0637

FILED
JUN 7 11:12:05
BROWARD COUNTY

6-107

122-1
JUN -9 PM 4:08

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA, 17TH JUDICIAL CIRCUIT COURT
BROWARD COUNTY, FL.

CASE NO. 98-5739CF10A

vs.

JUDGE: ROTHSCHILD

ERNESTO BEHRENS,
Defendant.

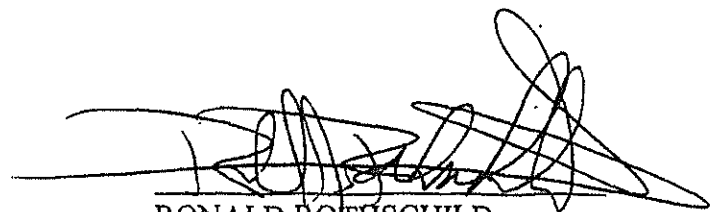
ORDER

Attorney for Defendant having presented to this Court a **MOTION TO COMPEL PRODUCTION OF PHOTOGRAPH NEGATIVES**, and the Court having examined said Motion and otherwise being fully advised in the premises, it is therefore,

ORDERED AND ADJUDGED that said Motion is hereby GRANTED. The Plantation Police Department shall provide written and notarized authority allowing the duplication and enlargement of the photographs taken in this case. These photos were taken by Marjorie Hanlon of the Plantation Police Department on May 12, 1995 and are associated with Agency Report Number 1619-95-05 and ORI Number 060600.

It is Further Ordered that this authorization shall be provided to the Law Office of Tyrone A. Terrell, P.A. 1895 W.Commercial Blvd. Suite 135 Ft. Lauderdale, Florida 33309 within Seven days of this Order.

DONE AND ORDERED at Fort Lauderdale, Broward County, Florida on this 8th day of June, 2000.


RONALD ROTHSCHILD
CIRCUIT COURT JUDGE

6-21

IN THE CIRCUIT COURT OF
THE SEVENTEENTH JUDICIAL CIRCUIT
BROWARD COUNTY, STATE OF FLORIDA

STATE OF FLORIDA,

CASE NO.: 98-5739CF10A

vs.

JUDGE: ROTHSCHILD

ERNESTO BEHRENS,
Defendant.

C

FILED
JUN 23 2000
CLERK OF COURT

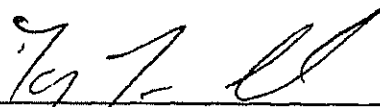
DEMAND FOR SPEEDY TRIAL

DEFENDANT, in the above cause, through undersigned counsel, demands speedy trial in this cause, pursuant to Florida Rule of Criminal Procedure 3.191(b).

Undersigned counsel further represents that Defendant has a bona fide desire to obtain a trial sooner than otherwise might be provided, and that Defendant is available for trial, has diligently investigated the case, and is prepared or will be prepared for trial within five (5) days, as required by Florida Rule of Criminal Procedure 3.191(g).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the Office of the State Attorney, Broward County Courthouse, Ft. Lauderdale, Florida, June 23, 2000.



TY TERRELL, ESQ.
Attorney for the Defendant
1895 W. Commercial Blvd. Ste. 135
Ft. Lauderdale, Florida 33309
Fla Bar No. 0077976
(954)489-2204

75 8-9 9/11

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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA, : CASE NO: 98-5739CF10A
Plaintiff, : JUDGE: ROTHSCHILD
vs. : STATE'S SUPPLEMENTAL DISCOVERY
ERNESTO BEHRENS, :
Defendant. :

RECEIVED
17th CIRCUIT COURT
BROWARD COUNTY, FL
JUN 30 PM 12:14
FELONY

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to the provisions of Rule 3.220(b)(1)(A), of the Florida Rules of Criminal Procedure, as supplement to the State's previous submission(s) of discovery herein, submits the following amendments(s) or addition(s):

COPY OF AUDIOCASSETTE TAPE OF STATEMENT OF ALLAN KRASSNER
COPY OF VIDEOCASSETTE OF INTERVIEW OF DEFENDANT
ACCORDING TO PLANTATION POLICE DEPARTMENT, BALANCE OF
AUDIOCASSETTE TAPE RECORDED STATEMENTS WERE TAPED OVER
PHOTOGRAPHIC LINE-UP FROM PALM BEACH SHERIFF'S OFFICE
ACCORDING TO PALM BEACH SHERIFF'S OFFICE, ONE PHOTOGRAPHIC
LINE-UP CANNOT CURRENTLY BE LOCATED

I HEREBY CERTIFY that a true copy hereof has been furnished by hand delivery this 30TH day of JUNE, 2000 to: TYRONE A. TERRELL, ESQ., 1895 WEST COMMERCIAL BLVD., SUITE 135, FORT LAUDERDALE, FLORIDA 33309

MICHAEL J. SATZ
State Attorney

By: Dennis Siegel
DENNIS SIEGEL FL BAR#258131
Assistant State Attorney
201 SE Sixth Street, Rm. 568
Fort Lauderdale, FL 33301
Telephone: (954) 831-6933
FAX: (954) 831-6936

158-9 9/11

C

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA, : CASE NO: 98-5739CF10A
Plaintiff, : JUDGE: ROTHSCHILD
vs. : STATE'S SUPPLEMENTAL DISCOVERY
ERNESTO BEHRENS,
Defendant. :

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to the provisions of Rule 3.220(b)(1)(A), of the Florida Rules of Criminal Procedure, as supplement to the State's previous submissions of discovery herein, submits the following amendments(s) in addition(s):

FILED
2000 JUN 30 PM 12:14
CLERK OF DISTRICT COURT
BROWARD COUNTY, FL

CRIME LABORATORY ANALYSIS REPORT DATED 9/16/97
SUPPLIED TO DEFENSE COUNSEL ON 6/24/00
CRIME LABORATORY ANALYSIS REPORT DATED 1/18/98
SUPPLIED TO DEFENSE COUNSEL ON 6/24/00
METRO-DADE POLICE DEPARTMENT PROPERTY RECEIPT
SUPPLIED TO DEFENSE COUNSEL ON 6/24/00
TWO SEPARATE TRANSCRIPTS SUPPLIED TO DEFENSE COUNSEL ON 6/24/00

I HEREBY CERTIFY that a true copy hereof has been furnished by hand delivery this 30TH day of JUNE, 2000 to: TYRONE A. TERRELL, ESQ., 1895 WEST COMMERCIAL BLVD., SUITE 135, FORT LAUDERDALE, FLORIDA 33309

MICHAEL J. SATZ
State Attorney

By:

Dennis Siegel
DENNIS SIEGEL FL BAR#258131
Assistant State Attorney
201 SE Sixth Street, Rm. 568
Fort Lauderdale, FL 33301
Telephone: (954) 831-6933
FAX: (954) 831-6936

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
BROWARD COUNTY, STATE OF FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

CASE NO.: 98-5739CF10A

JUDGE: ROTHSCILD

DEFENDANT'S AMENDED NOTICE OF ALIBI

YOU ARE HEREBY notified that the Defendant intends to claim the defense of alibi at the trial hereof and says:

1. At the exact date and time of the alleged offense, the Defendant was at the following location:

1910 NE 27th Court

Apt. 1

Lighthouse Point, Florida 33064

2. The Name and address of the witness upon whom the Defendant may call to establish the alibi is:

Paula Turgeon


2080 NE 26th Street

Lighthouse Point, FL 33064.

3. Pursuant to Fla. R. Cr. P. 3.200, you are directed to file and serve upon the Defendant, within five (5) days from receipt thereof, the name(s) and address(es) of any person(s) more particularly known to the State Attorney whom the State proposes to offer in rebuttal of said alibi defense.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the Office of the State Attorney, Broward County Courthouse, Ft. Lauderdale, Florida, this 6th day of July 2000.


Tyrone A. Terrell, Esquire
Attorney for the Defendant

Florida Bar #0077976

1895 West Commercial Boulevard

Suite 135

Ft. Lauderdale, FL 33309

Phone: (954) 489-2204/Fax: 489-0637

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT
BROWARD COUNTY, STATE OF FLORIDA

7-10
STATE OF FLORIDA,

CASE NO.: 98-5739CF10A

vs.

JUDGE: ROTHSCHILD

ERNESTO BEHRENS,

Defendant.

MOTION IN LIMINE FOR AN ORDER
PRECLUDING "WILLIAMS RULE" EVIDENCE

The Defendant, ERNESTO BEHRENS, through undersigned counsel, files this Motion as an objection to the State's intended use of "Williams Rule" testimony and/or evidence of a collateral crime or act of misconduct and hereby moves this Honorable Court, in Limine, for an Order precluding the State from using any pleading, testimony, remarks, questions, or argument which might inform the jury of said "Williams Rule" testimony and/or evidence of a collateral crime or act or misconduct.

This Motion in Limine is filed pursuant to Marion v. State, 283 So.2d 53 (Fla. 4th DCA 1973) and Franklin v. State, 229 So.2d 892, 895 (Fla. 3d DCA 1970) wherein the Court stated,

"If the defense objects to proffered evidence regarding other crimes as inadmissible because its sole relevance is to show propensity on the part of the accused to commit a crime, a trial court should then require the prosecution to show what relevance (other than propensity) the proffered evidence has to an issue of fact. The prosecution should be held to a strict standard of care, and if they do not meet that standard the proffered evidence should be excluded."

In order to determine these issues, the Court should conduct a pre-trial conference pursuant to Fla.R.Crim.P. 3.220(p) which provides, "The trial court may hold one or more pre-trial conferences, with trial counsel present, to consider such matters as will promote a fair and expeditious trial . . ."

Further, an Order in Limine is the proper way to handle the problem because disclosure of any of the testimony and evidence to the jury would be highly improper and prejudicial to the Defendant. Even though the Court were to sustain an objection and instruct the jury not to consider such testimony, this would not be curative of the error, and said use may cause a mistrial.

The State intends to introduce alleged facts, witnesses and evidence related to an incident, which allegedly occurred on August 9, 1996 in Palm Beach County, Florida. See Notice of Intent to Offer Evidence of Other Crimes Pursuant to Section 90.404(2)(b)(1), Florida Evidence Code, which was filed by the State on or about June 1, 2000.

The "Williams Rule" testimony and/or evidence of collateral crime or act of misconduct is objectionable for the reason that:

1. The sole purpose of the introduction of the testimony and evidence is to prove bad conduct or mere criminal propensity.
2. The act of misconduct occurred after the alleged crime, which is the subject of this prosecution.
3. The act is not similar to the alleged crime.
4. There is insufficient evidence that the Defendant committed the act.
5. The act is logically irrelevant to any fact of consequence in this case.
6. The prosecution does not have a substantial, bona fide need for the testimony and evidence.
7. The testimony and evidence has insufficient probative value to outweigh its prejudicial character.
8. The prosecution has other, less prejudicial evidence to prove the same fact.
9. The testimony and evidence is not relevant or material to the proof of a fact in issue.
10. The testimony and evidence is so unreliable and prejudicial that its introduction would

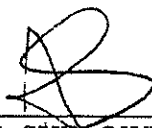
violate due process of law guaranteed by the United States and Florida Constitutions.

11. The use of the testimony and evidence has such a chilling effect on the Defendant's right to testify that its use violates due process of law guaranteed by the United States and Florida Constitutions.
12. The Defendant has been acquitted of the act; therefore, the prosecution is collaterally estopped from proof thereof in a subsequent prosecution.
13. Other grounds to be argued ORE TENUS.

WHEREFORE, the Defendant respectfully notifies this Honorable Court of its objection to the testimony as stated and moves herein for the entry of an order prohibiting the State from using same in any pleading, testimony, remarks, questions or arguments which might inform the jury of such facts.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by hand to the Office of the State Attorney, Dennis Siegel, Broward County Courthouse, Fort Lauderdale, Florida, this 6 day of July, 2000.



ANDREA SHELOWITZ, ESQ.
SHELOWITZ & SHELOWITZ, P.A.
Attorneys for the Defendant
Fla. Bar. No. 0092622
1895 West Commercial Boulevard, Ste. 135
Ft. Lauderdale, FL 33309
(954) 489 - 2204

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 98-005739CF10A

SBU
DS.

STATE OF FLORIDA

Plaintiff,

-vs-

ERNESTO BEHRENS,

Defendant.

COPY

Fort Lauderdale, Florida
July 10, 2000
8:47 A.M. - 9:10 A.M.

The above-entitled cause came on for hearing before
the Honorable ALFRED J. HOROWITZ, Circuit Court Judge, in
the Broward County Courthouse, 201 S.E. 6th Street, Room
518; Fort Lauderdale, Florida.

RECEIVED
270 AUG - 1 AM 7:52
STATE OF FLORIDA
JUDICIAL CIRCUIT

1 APPEARANCES:

2
3 DENNIS SIEGEL, ASSISTANT STATE ATTORNEY

4 By: DENNIS SIEGEL, ESQ.

5 On behalf of the State of Florida.

6 TY TERRELL, P.A.

7 By: TY TERRELL, ESQ.

8 On behalf of the Defendant.

9 ANDREA SHELOWITZ, P.A.

10 By: ANDREA SHELOWITZ, ESQ.

11 On behalf of the Defendant.

1 THEREUPON, the following proceedings were had:

2 MR. SIEGEL: How are you, Judge? This is a transfer
3 from Judge Rothschild.

4 THE COURT: He spoke to me about this case. This is
5 the one where there's a speedy trial issue?

6 MR. SIEGEL: Right. Judge, there is a speedy trial
7 demand that we will be talking to Judge Rothschild about --
8 was basically picking a jury, and not swearing them within
9 the next two or three weeks, and then have the trial
10 commence like September 10th or something like that.

11 MR. TERRELL: Something to that, Judge. We filed a
12 speedy. I think there's a couple of issues as far as dates
13 that can and can't be tried as far as when attorneys are
14 available. We're kind of at your disposal, Judge.

15 When I last spoke to Judge Rothschild, he didn't
16 know if you were going to just pick the jury or if you were
17 going to actually try the case or hear the motions. We're
18 kind of in limbo-

19 THE COURT: (Interposing) What kind of motions are
20 they?

21 MR. SIEGEL: It's a Williams Rule Motion.

22 THE COURT: I thought he was going to hear that?

23 MR. SIEGEL: We were there last Thursday or Friday,
24 I forget which. He was kind of saying it's kind of up in
25 the air, kind of what you wanted to do is what he kind of

1 indicated. He said he didn't want to leave you with
2 garbage, so he would clean up the case before you took it,
3 but he was going to talk to you about that.

4 THE COURT: This is regarding Mr. Behrens?

5 MR. SIEGEL: Yes, Judge.

6 THE COURT: He speaks English?

7 MR. SIEGEL: Yes.

8 THE COURT: How long will it take to try the case?

9 MR. SIEGEL: It will probably take five, six days or
10 so.

11 THE COURT: Well, I guess, the question is:

12 It's Judge Rothschild's case. It sounds like the
13 immediate concern is just getting a jury picked?

14 MR. SIEGEL: Correct.

15 THE COURT: So I can go ahead and do that, and then
16 -- and I can set it for a date in September, and I think if
17 Judge Rothschild wants to try the case, it's his case, he
18 can try it. If he wants me to try it, I'll try it.

19 What's happening is -- and the reason I'm a little
20 hesitant is I'm not getting -- it's like a division that's
21 getting slowly filled. I don't know how filled I'll be in
22 September, I guess, is what it comes down to, but I
23 certainly don't mind picking the jury. When did you want to
24 do that?

25 MR. TERRELL: If I had my preference, Judge, between

1 the 27th of July -- no, this 24th is a Monday.

2 THE COURT: I'll be out of town. I leave town the
3 25th of July for a couple weeks. Why can't we pick the jury
4 before that?

5 MR. SIEGEL: Judge, we can't. Ms. Shelowitz is
6 going to be out of town.

7 MS. SHELOWITZ: The 14th to the 21st, but we knew
8 that might happen.

9 THE COURT: So why can't we pick the jury this week
10 if we had to?

11 MS. SHELOWITZ: Judge, just for the record, and we
12 have all discussed this, that I think we also talked about
13 it in Rothschild that the Defendant does object to his trial
14 being delayed once a jury is sworn. He wants his case to go
15 from jury right into the actual trial itself.

16 I believe that the problem with August is I believe
17 that the State had a problem with August, which is why the
18 delay until September, but I just want to do make a record
19 for Mr. Behrens that he wants his trial all at once. That's
20 the purpose for the demand.

21 THE COURT: Well, if he wants to waive his speedy
22 trial, then that can take the edge off and they can pick a
23 jury and do everything in September or whenever the -- the
24 only reason it's here from my understanding is because of
25 the speedy trial issue.

1 If he wanted to waive his right to speedy trial,
2 then it goes back to Judge Rothschild, and then he'll
3 schedule it -- I assume, and I could be wrong, but I assume
4 he'll schedule it in September and we'll get the case tried.

5 MS. SHELOWITZ: He wants his trial now, I think is
6 what he's-

7 MR. TYRELL: (Interposing) Right. Actually, that's
8 what prompted the demand originally, Judge, is
9 Judge Rothschild has got a couple of Murder 1 cases going.
10 I think he's booked all the way to October, and that's what
11 prompted the speedy a couple of weeks ago.

12 I believe, he's been in custody almost three years
13 now. He wants to move it forward as quick as possible.

14 THE COURT: Well, again, all I can do is I can pick
15 the jury this week. From what you're telling me, you're
16 going to be out of town, Ms. Shelowitz, after the 14th, so I
17 can pick the jury this week and go from there. I don't know
18 what else to suggest, otherwise it will have to go back to
19 Judge Rothschild and he'll have to do -- you said August is
20 no good for whatever reason?

21 MR. SIEGEL: Right. Judge, there is a problem with
22 a witness as well as some various vacation plans, with the
23 primary problem is with the witness.

24 THE COURT: So the only time available for me, and
25 working in Ms. Shelowitz's schedule, is this week.

1 MR. TERRELL: Okay.

2 THE COURT: I would pick the jury -- can we do it
3 Friday?

4 MS. SHELOWITZ: I won't be here Friday, but Judge,
5 we planned that if Mr. Terrell has to pick the jury, that's
6 what we'll have to do to make sure that Mr. Behrens gets
7 this trial started. I don't want to make it difficult.

8 THE COURT: I would need -- this is a life felony,
9 so I would need 30 people. I think they have to special
10 order those, so why don't we set aside this Friday to pick
11 Mr. Behrens' jury?

12 MR. TERRELL: Judge, is it possible we can start it
13 on Thursday?

14 THE COURT: It's possible. It's going to depend on
15 how my week plays out. Part of the problem that I'm having
16 is I don't have a docket clerk, and they're treating this
17 division initially as a Strike Force division, so I'm
18 getting cases in here on a daily basis that I don't know
19 anything about, so it's hard for me to really say how the
20 week plays out. I don't know.

21 The answer is, yes, it's possible. If you'll just
22 be flexible with me, I could let you know later in the week.

23 MR. SIEGEL: Judge, again, I'm more than happy to be
24 flexible. My only problem is I've got a hearing on the
25 West Palm Beach on an executive assignment on Thursday. If

1 the Court's going to do it on Thursday, that's fine.

2 THE COURT: What time is your hearings?

3 MR. SIEGEL: It's a 1:00. I just need to call the
4 judge there. I might need it before that, because it's a
5 situation where the case was tried three years ago, and then
6 they have to do an inquiry of the jurors. They're trying to
7 summon the jurors back, so they've already been notified to
8 be there, so I'm not sure if they can cancel in time.

9 THE COURT: Is there somebody that can cover it for
10 you?

11 MR. SIEGEL: Because they -- no, there's only one
12 person designated to do it.

13 THE COURT: Sounds like, I mean, I can start it at
14 9:30, but I don't know that we can get a jury picked in the
15 morning. We might -- I don't know if that gives you enough
16 time to really run up to West Palm or if you can. It sounds
17 like Friday is going to be the best chance.

18 MR. SIEGEL: Given that, Thursday, the thing that I
19 have, I think for me Friday would be the best thing.

20 THE COURT: I'll tell you what, why don't we just --
21 why don't we come back here Wednesday morning, or even
22 better yet, let's say, Wednesday at 1:30, and then I'll know
23 exactly where I am running into Thursday.

24 Let's just set Mr. Behrens for a status on 1:30 on
25 Wednesday, and we'll have a good feel, and if I should learn

1 something before then, I'll call you.

2 MR. SIEGEL: Judge, as far as the Williams Rule
3 hearing, do you want us to go back to Judge Rothschild about
4 that?

5 THE COURT: Preferably, and ask him for sure if he
6 wants to try the case or if he wants me to.

7 MR. SIEGEL: Judge, I think Mr. Behrens' defense
8 counsel were correct that the Judge had strongly indicated
9 to us several times that he had special set-

10 THE COURT: (Interposing) And I'll try the case. I
11 mean, ideally, if he can handle the preliminary motions,
12 that would be wonderful. If he feels like he would rather I
13 do it because I'm doing the trial, I don't mind doing that,
14 but talk to him about it. Whatever he wants, I'll do.

15 MR. SIEGEL: Have a good day, Judge.

16 THE COURT: Thank you. I'll see you Wednesday.

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COURT CERTIFICATE

STATE OF FLORIDA
COUNTY OF BROWARD

I, LAURA A. FOREN, Shorthand Reporter, certify that
I was authorized to and did stenographically report the
foregoing proceedings and that the transcript is a true
record.

Dated this 25th day of July, 2000.

Laura A. Foren
Laura A. Foren
Certified Shorthand Reporter

89 0

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA, : CASE NO: 98-5739CF10A
Plaintiff, : JUDGE: ROTHSCHILD
vs. : STATE'S SUPPLEMENTAL DISCOVERY
ERNESTO BEHRENS,
Defendant. :

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to the provisions of Rule 3.220(b)(1)(A), of the Florida Rules of Criminal Procedure, as supplement to the State's previous submission(s) of discovery herein, submits the following amendments(s) or addition(s):

THE EVALUATION OF FORENSIC DNA EVIDENCE

(National Academy Press, 1996)

DNA TECHNOLOGY IN FORENSIC SCIENCE

(National Academy Press, 1992)

Above available for inspection at State Attorney's Office

Chakraborty, R. 1992. Sample Size Requirements for Addressing the Population Genetic Issues of Forensic Use of DNA Typing.
Human Biology 64: 141-159

I HEREBY CERTIFY that a true copy hereof has been furnished by hand delivery this 11th day of July, 2000 to: Tyrone A. Terrell, Esq., 1895 West Commercial Blvd., Suite 135, Fort Lauderdale, Florida 33309

MICHAEL J. SATZ

State Attorney

By: Dennis Siegel

DENNIS SIEGEL FL BAR#258131

Assistant State Attorney

201 SE Sixth Street, Rm. 568

Fort Lauderdale, FL 33301

Telephone: (954) 831-6933

FAX: (954) 831-6936

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

8-9
CASE NO: 98-5739 CF10(A)

8-9
JUDGE: RONALD ROTHSCHILD

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

**CERTIFICATE OF JUDGE OF REQUESTING STATE
FOR ATTENDANCE OF OUT-OF-STATE WITNESS**

TO: The Honorable Lorraine C. Parker
Judge of the Superior Court of New Jersey
Law Division-Sussex County
Criminal Part

GREETINGS:

Upon reading the attached Affidavit Of Prosecuting Attorney For Certificate To Procure Out-Of-State Witness of Dennis Siegel, Assistant State Attorney of the Seventeenth Judicial Circuit of Florida, sworn to on the 18th day of May, 2000, and due deliberation having been given thereto, and the facts hereinafter stated appearing to my satisfaction,

I, Ronald Rothschild, as Judge of the Circuit Court of the Seventeenth Judicial Circuit of Florida, pursuant to the Uniform Law to Secure the Attendance of Witnesses from

STATE OF FLORIDA V. ERNESTO BEHRENS

Case No: 98-5739 CF10(A)

Judge: RONALD ROTHSCHILD

**CERTIFICATE OF JUDGE OF REQUESTING STATE
FOR ATTENDANCE OF OUT-OF-STATE WITNESS**

Page 2 of 4

Within or Without A State in Criminal Proceedings, said law being codified at Chapter 942,
Florida Statutes,

DO HEREBY CERTIFY AS FOLLOWS:

1. The Circuit Court of the Seventeenth Judicial Circuit of Florida, In and For Broward County, Florida, is a court of record of the State of Florida.
2. On September 11, 2000, Ernesto Behrens will be tried in the aforesaid Circuit Court for the crimes of Sexual Battery-Armed and Burglary Of A Dwelling With A Battery which crimes are, respectively, a life felony and a first degree felony punishable by life, and which are punishable by up to life in prison in the state penitentiary.
3. Michelle Neuman, who resides at 7 Laurel Terrace, Sparta, New Jersey 07871, is a material witness in and at the trial of the said Ernesto Behrens in that her testimony vitally bears on the case, and the testimony is not cumulative and cannot be obtained from any other available witness.
4. The appearance of Michelle Neuman will be required before the aforementioned Circuit Court on the 15th day of September, 2000, at 9:00 a.m. until she has completed her testimony, or for a period not to exceed 8 days commencing on September 15, 2000, at 9:00 a.m.
5. The State of Florida has, by Chapter 942, Florida Statutes, has made provisions for commanding persons within its borders to attend and testify in criminal prosecutions commenced or about to be commenced in any state which, by its laws, has made provisions for commanding persons within that state to attend and testify in criminal prosecutions in the State of Florida. The State of New Jersey, by New Jersey Statutes Annotated 2A:81-18 through 2A:81-22, has made provisions for commanding persons within its borders to attend and testify in criminal prosecutions in the State of Florida.
6. The laws of the State of Florida, by virtue of Chapter 942, Florida Statutes, and the laws of any state through which Michelle Neuman may be required to pass by the ordinary course of travel to attend said jury trial, will give to

STATE OF FLORIDA V. ERNESTO BEHRENS

Case No: 98-5739 CF10(A)

Judge: RONALD ROTHSCHILD

**CERTIFICATE OF JUDGE OF REQUESTING STATE
FOR ATTENDANCE OF OUT-OF-STATE WITNESS**

Page 3 of 4

Michelle Neuman, while in the State of Florida pursuant to any summons issued by a judge of the Superior Court of New Jersey, Law Division-Sussex County, Criminal Part, requiring her presence in the State of Florida in connection with the above-entitled cause, protection from service of criminal and civil process in connection with any matter occurring before the entrance into the State of Florida of Michelle Neuman upon and pursuant to such summons or subpoena.

7. The date and location of the trial in this matter were changed after the filing of the attached Affidavit of the prosecuting attorney and the granting of this Certificate.

AND I DO HEREBY RECOMMEND that process issue directing Michelle Neuman to appear as a witness at the hour of 9:00 a.m. on Friday, the 15th day of September, 2000, before the Circuit Court Of The Seventeenth Judicial Circuit In And For Broward County, Florida, and that Michelle Neuman be required to continue to attend and testify as a witness until she has completed her testimony, or for a period not to exceed 8 days commencing on September 15, 2000, at 9:00 a.m., in the trial encaptioned **State of Florida v. Ernesto Behrens**, case number 98-5739 CF10(A), before the Honorable Alfred Horowitz, Circuit Court Judge, in the Circuit Court Of The Seventeenth Judicial Circuit, In And For Broward County, Florida, in Room 518 of the Broward County Courthouse, 201 S.E. 6th Street, Fort Lauderdale, Florida 33301, in order to testify in the aforesaid proceeding, for which attendance she will receive the prescribed statutory fees and expenses provided for witnesses pursuant to F.S.942.03, as well as an allowance for meals and accommodations if required.

STATE OF FLORIDA V. ERNESTO BEHRENS

Case No: 98-5739 CF10(A)


Judge: RONALD ROTHSCHILD

**CERTIFICATE OF JUDGE OF REQUESTING STATE
FOR ATTENDANCE OF OUT-OF-STATE WITNESS**

Page 4 of 4

I FURTHER CERTIFY that arrangements will be made by the State Attorney's Office of the Seventeenth Judicial Circuit of Florida to transport Michelle Neuman via commercial airline from the State of New Jersey to Fort Lauderdale, Florida, and then to transport her to the Broward County Courthouse. Upon completion of her testimony, she will be transported back to the airport and will return to the State of New Jersey via commercial airline. The cost of travel, accommodations, meals, and incidental expenses will be paid by the State of Florida as allowed by law and court order.

DONE AND ORDERED at Fort Lauderdale, Broward County, Florida, this 18th
day of July, 2000.



HONORABLE RONALD ROTHSCHILD
Circuit Court Judge

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

8-9
CASE NO: 98-5739 CF10(A)

JUDGE: RONALD ROTHCHILD

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

FELONY
2000 JUL 25 PM 4:11
RECEIVED
CLERK, CIRCUIT COURT
BROWARD COUNTY, FL.

REQUEST FOR JUDICIAL NOTICE

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and respectfully moves this Honorable Court, pursuant to F.S.90.203, to take judicial notice of the numerous court orders setting trial dates in this matter and the Defendant's Notice Of Alibi contained within the records of the Clerk of the Circuit Court of the Seventeenth Judicial Circuit regarding this case, and as grounds states the following:

1. This case has been set for trial numerous times from its inception until the current date.
2. On June 6, 2000, the defense in this case filed a pleading encaptioned Defendant's Notice of Alibi which provides an alleged location where the Defendant was at the time of commission of the crime, and the name and address of an alibi witness. Rule 3.200 of the Florida Rules of Criminal Procedure requires a defendant to supply to the prosecuting attorney a notice of alibi "not less than ten (10) days before trial . . .".
3. The June 6, 2000, pleading was the first time the defense set forth an alibi despite the passage of numerous trial dates before which the defense was legally obligated to notice an alibi defense

STATE OF FLORIDA V. ERNESTO BEHRENS

Case No. 98-5739 CF10(A)

Judge RONALD ROTHCHILD

REQUEST FOR JUDICIAL NOTICE

Page 2 of 2

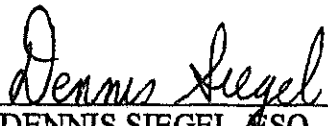
4. The Defendant's Notice Of Alibi states that the Defendant was at 750 N.W. 91st Terrace, Plantation, Florida, at the date and time of the offense, and that his alibi witness is Paula Turgeon.
5. On June 28, 2000, the undersigned Assistant State Attorney took the deposition of Paula Turgeon, and she stated that she was with the Defendant at 1910 N.E. 27th Court, Apt. 1, Lighthouse Point, Florida, when the crime occurred.
6. Florida Statute 90.203 states that a court shall take judicial notice of any matter in Florida Statute 90.202 when a party requests it, gives each adverse party timely written notice of the request, and furnishes the court with sufficient information to enable it to take judicial notice. F.S.90.202(6) states that a court can take judicial notice of its records.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/hand delivery this 25 day of ^{July}~~June~~, 2000, to: TYRONE A. TERRELL, ESQ., 1895 W. Commercial Boulevard, Suite 135, Fort Lauderdale, Florida 33309.

MICHAEL J. SATZ
State Attorney

By:


DENNIS SIEGEL, ESQ.
Assistant State Attorney
Florida Bar #258131
201 S.E. Sixth Street, Suite 568
Fort Lauderdale, Florida 33301
(954) 831-6933
FAX: (954) 831-6936

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
BROWARD COUNTY, STATE OF FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

CASE NO.: 98-5739CF105

JUDGE: ROTHCHILD

400 JUL 28 PM 3:50
FELONY
CLERK: CIRCULAR CLERK COURT
BROWARD COUNTY, FL.


DEFENDANT'S MOTION TO STRIKE
STATE'S REQUEST FOR JUDICIAL NOTICE

COMES NOW the Defendant, by and through undersigned counsel, moves this Court to Strike the State's Request for Judicial Notice, and as grounds states the following:

1. On June 6, 2000, the defense filed a Notice of Alibi in conformity with Rule 3.200 of the Florida Rules of Criminal Procedure.
2. On July 6, 2000, Defense counsel realized an error with the address in that the undersigned put the address of the alleged victim (obviously not an "alibi address") instead of the address of Paula Turgeon, the Alibi witness. The Assistant State Attorney, Dennis Siegel, became aware of the correct Alibi address during the deposition of Paula Turgeon.
3. On July 6, 2000, an Amended Notice of Alibi was filed. The undersigned counsel hand delivered the Amended Notice to Dennis Siegel, and even spoke to him regarding the clerical error. Dennis Siegel responded by laughing, and stating, "I caught that mistake also," and accepted the Amended Alibi Notice.
4. The mistake was obvious to the prosecutor as a clerical error and did not cause the State prejudice. Further, to date, the State has not put forward any objection to this Alibi Defense, or the manner in which they were noticed.
5. The Amended Notice of Alibi complies with the rules of Criminal Procedure and in NO WAY should the clerical error of counsel, which has since been corrected, be held against the Defendant. Furthermore, the actions of omitting substantial facts in the filing of the State's Request for Judicial Notice should not be condoned by this Court.
6. It is respectfully requested that this Court Strike the State's Request as a frivolous Motion, and allow the parties to proceed to a fair and error free trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished via hand delivery to the Office of the State Attorney, Broward County Courthouse, Ft. Lauderdale, Florida, this 27th day of July, 2000.



Tyrone A. Terrell, Esquire
Attorney for the Defendant
Florida Bar #0077976
1895 West Commercial Boulevard
Suite 135
Ft. Lauderdale, FL 33309
Phone: (954) 489-2204/Fax: 489-0637

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
BROWARD COUNTY, STATE OF FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

CASE NO.: 98-5739CF10A

JUDGE: ROTHSCHILD

2001 JUL 28 PM 3:50
FELONY
CLERK, CIRCUIT COURT
BROWARD COUNTY, FL

DEFENDANT'S AMENDED NOTICE OF ALIBI

YOU ARE HEREBY notified that the Defendant intends to claim the defense of alibi at the trial hereof and says:

1. At the exact date and time of the alleged offense, the Defendant was at the following location:
1910 NE 27th Court
Apt. 1
Lighthouse Point, Florida 33064
2. The Name and address of the witness upon whom the Defendant may call to establish the alibi is:

Paula Turgeon
2080 NE 26th Street
Lighthouse Point, Fl 33064.

3. Pursuant to Fla. R. Cr. P. 3.200, you are directed to file and serve upon the Defendant, within five (5) days from receipt thereof, the name(s) and address(es) of any person(s) more particularly known to the State Attorney whom the State proposes to offer in rebuttal of said alibi defense.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the Office of the State Attorney, Broward County Courthouse, Ft. Lauderdale, Florida, this 6th day of July 2000.

Tyron A. Terrell
Tyron A. Terrell, Esquire
Attorney for the Defendant
Florida Bar #0077976
1895 West Commercial Boulevard
Suite 135
Ft. Lauderdale, FL 33309
Phone: (954) 489-2204/Fax: 489-0637

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

8-9

CASE NO: 98-5739 CF10(A)

JUDGE: RONALD ROTHSCHILD

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

2000 JUL 31 PM 3: 54
FELONY
BROWARD COUNTY COURT
BROWARD COUNTY, FL.

**RESPONSE TO DEFENDANT'S MOTION TO STRIKE STATE'S REQUEST FOR
JUDICIAL NOTICE**

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Response to the Defendant's Motion To Strike State's Request For Judicial Notice as follows:

On July 27, 2000, the defense filed a pleading encaptioned Defendant's Motion To Strike State's Request For Judicial Notice. The Motion was directed to the portion of the State of Florida's Request For Judicial Notice which dealt with the alibi address in the Defendant's Notice Of Alibi. The state concedes that the defense filed an Amended Notice Of Alibi changing the alibi address after the Request For Judicial Notice had been prepared. The State will not concede that the Notice Of Alibi was erroneous, and the undersigned never acknowledged that it was a mistake. The State's laughing response to the Amended Notice Of Alibi was that I had noticed that the address that the defendant put as his alibi address was the location of the crime.

Nevertheless, the State will not proceed on its Request For Judicial Notice on the issue of the alibi address that was contained in the Notice Of Alibi. The State will proceed on its Request For Judicial Notice on one or more other issues addressed in the Request For Judicial Notice.

STATE OF FLORIDA V. ERNESTO BEHRENS

Case No. 98-5739 CF10(A)

Judge RONALD ROTHSCCHILD

Page 2 of 2

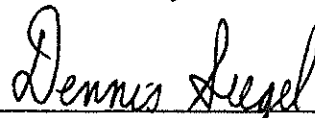
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/hand delivery this 31st day of July, 2000, to: TYRONE A. TERRELL, ESQ., 1895 W. Commercial Boulevard, Suite 135, Fort Lauderdale, Florida 33309.

MICHAEL J. SATZ

State Attorney

By:



DENNIS SIEGEL, ESQ.

Assistant State Attorney

Florida Bar #258131

201 S.E. Sixth Street, Suite 568

Fort Lauderdale, Florida 33301

(954) 831-6933

FAX: (954) 831-6936

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
BROWARD COUNTY, STATE OF FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO:98-5739CF10A

ERNESTO BEHRENS,

JUDGE: ROTHSCOLD

Defendant.

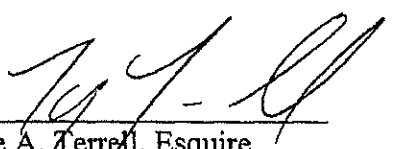
DEFENDANT'S SUPPLEMENTAL AMENDED WITNESS LIST

Defendant in the above cause, through undersigned counsel, pursuant to Fla. R.Cr.P. 3.220(d)(1)(A), furnishes to the State of Florida this written list of witnesses whom the Defendant expects to call at the trial or hearing in this cause:

Det. William Tigh
451 NW 70th Terrace
Plantation, Florida 33317

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the Office of the State Attorney, Broward County Courthouse, Ft. Lauderdale, Florida, this 30th day of July, 2000.



Tyrone A. Terrell, Esquire
Attorney for the Defendant
Florida Bar #0077976
1895 West Commercial Boulevard
Suite 135
Ft. Lauderdale, FL 33309
Phone: (954) 489-2204/Fax: 489-0637

2-9 9/11

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

O

CASE NO:98-5739CF10A

STATE OF FLORIDA,

JUDGE:ROTHSCHILD

Plaintiff,

vs.

STATE'S SUPPLEMENTAL DISCOVERY

ERNESTO BEHRENS

Defendant.

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to the provisions of Rule 3.220(b)(1)(A), of the Florida Rules of Criminal Procedure, as supplement to the State's previous submission(s) of discovery herein, submits the following amendments(s) or addition(s): AMEND TO INCLUDE:

CYNTHIA VANLANDINGHAM
15 SOUTH EAST 1ST AVENUE
SUITE B
GAINESVILLE, FL 32601

FELONY
2000 AUG -2 PM 3:55
BROWARD COUNTY COURT
CLERK OF COURT
RECEIVED

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail/hand delivery this 2nd day of AUGUST A.D. 2000. TO TYRONE TERRELL, ESQ. 1895 WEST COMMERCIAL BLVD., SUITE 135 FT LAUD, FL 33309

MICHAEL J. SATZ
State Attorney

By:

Dennis Siegel
DENNIS SIEGEL

Assistant State Attorney
FL Bar#258131
Broward County Courthouse
201 SE Sixth Street, Rm. 568
Fort Lauderdale, Florida 33301
Telephone: (954) 831-6933

8-9

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA
FELONY

2000 AUG -4 AM 11:11

CASE NO: 98-5739CF10A

STATE OF FLORIDA, :
Plaintiff, :
BROWARD COUNTY COURT
BROWARD COUNTY, FL.

JUDGE: ROTHSCHILD

vs. : STATE'S SUPPLEMENTAL DISCOVERY

ERNESTO BEHRENS
Defendant. :

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to the provisions of Rule 3.220(b)(1)(A), of the Florida Rules of Criminal Procedure, as supplement to the State's previous submission(s) of discovery herein, submits the following amendments(s) or addition(s):

AMEND TO INCLUDE:

DEPOSITIONS OF GUY DURAND, M.D.

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail/hand delivery this 4th day of AUGUST A.D. 2000. TO TYRONE TERRELL, ESQ. 1895 WEST COMMERCIAL BLVD., SUITE 135 FT LAUD, FL 33309

MICHAEL J. SATZ
State Attorney

By: Dennis Siegel
DENNIS SIEGEL
Assistant State Attorney
FL Bar#258131
Broward County Courthouse
201 SE Sixth Street, Rm. 568
Fort Lauderdale, Florida 33301
Telephone: (954) 831-6933

2/9

IN THE CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Case #:98-5739 CF 10A

Plaintiff,

Judge: HOROWITZ

vs.

ERNESTO BEHRENS,

Defendant

_____ /

MEMORANDUM TO THE HONORABLE JUDGE HOROWITZ

REQUEST FOR RECONSIDERATION OF DEFENDANT'S
ASSERTION OF HIS RIGHT TO PROCEED TO TRIAL

Defendant respectfully reasserts his objection to the choosing and impaneling of a jury on August 9, 2000, and the setting of the actual trial date for September 11, 2000, thirty-three days later. (And potentially later depending on jury availability.)

Defendant filed a demand for speedy trial on June 23, 2000, and has at all times maintained his readiness, availability and desire for trial.

Defendant agrees that a trial commences for speedy trial purposes upon the swearing of the jury panel for voir dire examination, and agrees to a trial date within the speedy trial limit. Moore v. State, 368 So.2d 1291 (Fla. 1979)

According to Compo v. State, 525 So.2d 505 (Fla. 2nd DCA 1988) under a circumstance such as the present where the speedy trial rule will have been complied with, but there has been an interruption in the progress of the trial, the defendant relies on McDermott v. State, 383 So.2d 712 (Fla. 3d DCA 1980) in order to prevent such prejudice and loss of due process from occurring in the above styled cause.

The McDermott Rule is based upon the state's interest in the integrity of the jury system and the assurance that an impaneled jury will remain free of any extraneous influence.

Among the factors assessed are the:

1) length and reason for delay,
2) the defendant's assertion of his right to proceed to trial,
and 3) possible prejudice.

1) Defendant asserts that thirty-three days is an undue and unreasonable separation of the jury.

"Armstrong contends that a jury separation of some fifty-two days during his trial shows the existence of circumstances capable of prejudicing the deliberative functions of the jury. We agree and reverse..." Armstrong v. State, 426 So.2d 1173 (1983)

In State v. White, 129 Vt. 220 (1971), a delay of sixty-two days constituted a sufficient period of time so as to warrant reversal of the defendant's judgement of conviction.

In McDermott a fifty-five day separation of jurors resulted in discharge.

2) Defendant asserts that as the seriousness of the charges decreases, so does the tolerable length of delay. In the instant case, the charges filed are punishable by life, allowing little or no tolerance.

3) The state has not shown good cause to warrant a continuation, other than personal vacation time. As you may remember, this court agreed to allow defense counsel, as an officer of the court, to assure the presence of defendant's ex-wife, a state witness.

4) The Judge has not shown good cause to warrant a continuation, other than personal vacation time, and general congestion of the docket.

5) Defendant contends that it is a violation of his Constitutional due process rights to proceed to trial without interruption.

"A separation between the selection of the jury and the commencement of the actual trial is highly undesirable and should be avoided wherever possible. ...Absent a bona fide emergency or some genuinely exigent circumstance, the court ordinarily should proceed with the criminal trial." A. v. State, 572 So.2d 969 (1990)

"A trial will normally proceed from the impaneling of the jury on through rendition of the verdict without undue interruption. A continuance during the progress of the trial, which results in protracted jury separation must be based upon a real and substantial need which is supported by a showing of due diligence and good faith..." Armstrong v. State, 426 So.2d 1173 (Fla. 5th DCA 1983)

6) Error would be assigned to the refusal of the court to cause prospective jurors to be sworn to try the issues in accordance with defendant's requests, contrary to demand by state which has no valid cause for refusal. Kennick v. State (1958)

In Raines v. State, 65 So.2d 558 (Fla. 1953) only 15 hours was necessary to prompt a reversal, where the proper admonitions were not given.

* The defendant asserts that such an extended lapse of time coupled with no cause shown by the state or the Judge, alone, would overcome the defendant's need to show that separation of the jury prejudiced his rights.

However, courts have held that the party claiming to be aggrieved by the undue delay in presentation of a case to the jury need only show the existence of circumstances capable of prejudicing the deliberate functions of the a jury. McDermott

In this case the alleged crime occurred May 12, 1995.

Defendant was arrested in Broward County on March 28, 1998.

7) More than five years has passed since the occurrence of this alleged incident. Defendant has already been unduly prejudiced by the death of a key defense witness in July of 1999, whose whereabouts were previously unknown.

8) Additionally, the court has been advised that the defendant's alibi witness would be unavailable after August 27, 2000. This witness has already postponed trips on several occasions to accomodate the previously set trial dates, and did agree one last time to be available during the speedy trial window. (The speedy trial window, although having been met by the picking of the jury on August 9, 2000, would have ended on August 22, 2000.)

9) The court has also been advised that the defendant's key witness, a doctor, who had performed surgery on defendant on May 8, 1995, will apparently be unavailable all of September, October and possibly longer, as he is returning to his native country of Haiti, and is also doing some other extensive travelling.

10) Even the state's own witness, Michelle Neumann, the former wife of defendant, has declared availability until August 31, 2000. She will be in Amsterdam for an unknown period of time.

Clearly there is fact of prejudice by the undue separation of jury, and this court has been forewarned in ample time to make proper arrangements by either rearranging dockets, and/or transferring this case to a judge that could accomodate the speedy trial window.

This defendant was transferred to the Honorable Judge Horowitz by the Honorable Judge Rothschild in order to do so.

11) Defendant fears that he is being prejudiced by being forced to go to trial without these key witnesses, and relying only on the remaining DNA expert witnesses, who appear to have lost interest in this case due to the extensive delays, and feels that a further delay caused by the undue separation of jury would influence their integrity and regard for this defendant, especially since they have not been paid for their services on this trial or previous trials.

12) Defendant asserts and fears that because of the delay, the state could subpoena further witnesses, a tactic already shown by the prosecutor who has motioned to introduce William's Rule evidence as late as June 1, 2000, clearly a discovery violation. More than four motions to compel production of discovery were filed against the state in 1999, and the state was ordered to produce all discovery within 20 days at that time.

13) Defendant asserts possible prejudice by newspaper reports, and other media coverage, past or present, influencing the jury, which have falsely declared the defendant to have been matched by DNA to at least 3 rape cases.

14) Defendant asserts that thirty-three days allows the opening for tampering with the jury, and that the temptation to do so is so great, that in no way can the defendant's trial be conducted with the fairness and security that the bill of rights contemplates.

15) Defendant asserts that in a world where most people spend a large part of their day on the internet, thirty-three days presents too large of a window for curious jurors to delve into the defendant's current charges or past criminal convictions.

It is with great respect to this Honorable Court that this defendent requests that he not be asked to choose or risk his Constitutional rights to due process of law without prejudice, including a trial without interruption, in order to obtain his Constitutional rights for a speedy trial.

And therefore, after recontacting all witnesses since the last hearing of July 21, 2000, and finding them still unavailable, and whereby this defendant did formally object to any interruption in his trial and disagreed to any undue separation of jurors, and did ask the state to show good cause for such continuation, which they did not, does respectfully request that either the docket be rearranged to disallow prejudice or any other Constitutional violation by properly conducting a speedy trial without interruption within said limits, or by transferring this case to strike force or a judge who has the ability to provide justice within the law, as outlined.

This memorandum having been duly discussed with my defense counsel, and with agreement by them to help preserve my rights to the fullest extent of the law, including any further necessary actions, is respectfully submitted to the Honorable Judge Horowitz this 3rd day of August, 2000 for his prompt attention and reconsideration.

Sincerely,



Ernesto Behrens, #5098-6793
North Broward County Jail
1550 NW 30th Ave.
Pompano Beach, Florida 33069

Defense Counsel: Mr. Ty Terrell
489-2204

cc: Judge Rothschild
Dennis Siegel, P.A.
Clerk of Court

8-9

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA, :
Plaintiff, :
vs. : STATE'S SUPPLEMENTAL DISCOVERY
ERNESTO BEHRENS :
Defendant. :

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to the provisions of Rule 3.220(b)(1)(A), of the Florida Rules of Criminal Procedure, as supplement to the State's previous submission(s) of discovery herein, submits the following amendments(s) or addition(s): AMEND TO INCLUDE:

TINA ALVAREZ
C/O WALTER A. BRILL
ASSOCIATE GENERAL COUNSEL
DEPARTMENT 981
1030 DELTA BOULEVARD
ATLANTA, GA 30320

ALSO THE FLIGHT ATTENDANT SCHEDULE OF MICHELE NEUMAN

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail/hand delivery this 4th day of AUGUST A.D. 2000. TO TYRONE TERRELL, ESQ. 1895 WEST COMMERCIAL BLVD. SUITE 135, FT LAUDERDALE, FL 33309

MICHAEL J. SATZ
State Attorney

By: Dennis Siegel
DENNIS SIEGEL
Assistant State Attorney
FL Bar#258131
Broward County Courthouse
201 SE Sixth Street, Rm. 568
Fort Lauderdale, Florida 33301
Telephone: (954) 831-6933

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

8-10 C
CASE NO: 98-59CF102

JUDGE: ROTHSCHILD

STATE OF FLORIDA,

Plaintiff,

vs.

STATE'S SUPPLEMENTAL DISCOVERY

ERNESTO BEHRENS

Defendant.

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to the provisions of Rule 3.220(b)(1)(A), of the Florida Rules of Criminal Procedure, as supplement to the State's previous submission(s) of discovery herein, submits the following amendments(s) or addition(s):

AMEND AS FOLLOWS: FINAL ORDER IN DEPARTMENT OF HEALTH vs. GUY DURAND, M.D. RECOMMENDED ORDER IN DEPARTMENT OF HEALTH vs. GUY DURAND, M.D.

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail/hand delivery this 9th day of AUGUST A.D. 2000 TO TYRONE TERRELL, ESQ. 1895 W. COMMERCIAL BLVD, SUITE 135, FT LAUDERDALE, FL 33309

MICHAEL J. SATZ
State Attorney

By: Dennis Siegel

DENNIS SIEGEL

Assistant State Attorney

FL Bar#258131

Broward County Courthouse

201 SE Sixth Street, Rm. 568

Fort Lauderdale, Florida 33301

Telephone: (954) 831-6933

IN THE CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant

Case #:98-5739 CF 10A

Judge: HOROWITZ

Filed In Open Court,
CLERK OF THE CIRCUIT COURT
ON AUG 09 2000
BY *Hans Hargis*

MEMORANDUM TO THE HONORABLE JUDGE HOROWITZ

REQUEST FOR RECONSIDERATION OF DEFENDANT'S
ASSERTION OF HIS RIGHT TO PROCEED TO TRIAL

Defendant respectfully reasserts his objection to the choosing and impaneling of a jury on August 9, 2000, and the setting of the actual trial date for September 11, 2000, thirty-three days later. (And potentially later depending on jury availability.)

Defendant filed a demand for speedy trial on June 23, 2000, and has at all times maintained his readiness, availability and desire for trial.

Defendant agrees that a trial commences for speedy trial purposes upon the swearing of the jury panel for voir dire examination, and agrees to a trial date within the speedy trial limit. Moore v. State, 368 So.2d 1291 (Fla. 1979)

According to Compo v. State, 525 So.2d 505 (Fla. 2nd DCA 1988) under a circumstance such as the present where the speedy trial rule will have been complied with, but there has been an interruption in the progress of the trial, the defendant relies on McDermott v. State, 383 So.2d 712 (Fla. 3d DCA 1980) in order to prevent such prejudice and loss of due process from occurring in the above styled cause.

The McDermott Rule is based upon the state's interest in the integrity of the jury system and the assurance that an impaneled jury will remain free of any extraneous influence.

Among the factors assessed are the:

- 1) length and reason for delay,
- 2) the defendant's assertion of his right to proceed to trial,
- and 3) possible prejudice.

1) Defendant asserts that thirty-three days is an undue and unreasonable separation of the jury.

"Armstrong contends that a jury separation of some fifty-two days during his trial shows the existence of circumstances capable of prejudicing the deliberative functions of the jury. We agree and reverse..." Armstrong v. State, 426 So.2d 1173 (1983)

In State v. White, 129 Vt. 220 (1971), a delay of sixty-two days constituted a sufficient period of time so as to warrant reversal of the defendant's judgement of conviction.

In McDermott a fifty-five day separation of jurors resulted in discharge.

2) Defendant asserts that as the seriousness of the charges decreases, so does the tolerable length of delay. In the instant case, the charges filed are punishable by life, allowing little or no tolerance.

3) The state has not shown good cause to warrant a continuation, other than personal vacation time. As you may remember, this court agreed to allow defense counsel, as an officer of the court, to assure the presence of defendant's ex-wife, a state witness.

4) The Judge has not shown good cause to warrant a continuation, other than personal vacation time, and general congestion of the docket.

5) Defendant contends that it is a violation of his Constitutional due process rights to proceed to trial without interruption.

"A separation between the selection of the jury and the commencement of the actual trial is highly undesirable and should be avoided wherever possible. ...Absent a bona fide emergency or some genuinely exigent circumstance, the court ordinarily should proceed with the criminal trial." A. v. State, 572 So.2d 969 (1990)

"A trial will normally proceed from the impaneling of the jury on through rendition of the verdict without undue interruption. A continuance during the progress of the trial, which results in protracted jury separation must be based upon a real and substantial need which is supported by a showing of due diligence and good faith..." Armstrong v. State, 426 So.2d 1173 (Fla. 5th DCA 1983)

6) Error would be assigned to the refusal of the court to cause prospective jurors to be sworn to try the issues in accordance with defendant's requests, contrary to demand by state which has no valid cause for refusal. Kennick v. State (1958)

In Raines v. State, 65 So.2d 558 (Fla. 1953) only 15 hours was necessary to prompt a reversal, where the proper admonitions were not given.

* The defendant asserts that such an extended lapse of time coupled with no cause shown by the state or the Judge, alone, would overcome the defendant's need to show that separation of the jury prejudiced his rights.

However, courts have held that the party claiming to be aggrieved by the undue delay in presentation of a case to the jury need only show the existence of circumstances capable of prejudicing the deliberate functions of the a jury. McDermott

In this case the alleged crime occurred May 12, 1995.

Defendant was arrested in Broward County on March 28, 1998.

7) More than five years has passed since the occurrence of this alleged incident. Defendant has already been unduly prejudiced by the death of a key defense witness in July of 1999, whose whereabouts were previously unknown.

8) Additionally, the court has been advised that the defendant's alibi witness would be unavailable after August 27, 2000. This witness has already postponed trips on several occasions to accomodate the previously set trial dates, and did agree one last time to be available during the speedy trial window. (The speedy trial window, although having been met by the picking of the jury on August 9, 2000, would have ended on August 22, 2000.)

9) The court has also been advised that the defendant's key witness, a doctor, who had performed surgery on defendant on May 8, 1995, will apparently be unavailable all of September, October and possibly longer, as he is returning to his native country of Haiti, and is also doing some other extensive travelling.

10) Even the state's own witness, Michelle Neumann, the former wife of defendant, has declared availability until August 31, 2000. She will be in Amsterdam for an unknown period of time.

Clearly there is fact of prejudice by the undue separation of jury, and this court has been forewarned in ample time to make proper arrangements by either rearranging dockets, and/or transferring this case to a judge that could accomodate the speedy trial window.

This defendant was transferred to the Honorable Judge Horowitz by the Honorable Judge Rothschild in order to do so.

11) Defendant fears that he is being prejudiced by being forced to go to trial without these key witnesses, and relying only on the remaining DNA expert witnesses, who appear to have lost interest in this case due to the extensive delays, and feels that a further delay caused by the undue separation of jury would influence their integrity and regard for this defendant, especially since they have not been paid for their services on this trial or previous trials.

12) Defendant asserts and fears that because of the delay, the state could subpoena further witnesses, a tactic already shown by the prosecutor who has motioned to introduce William's Rule evidence as late as June 1, 2000, clearly a discovery violation. More than four motions to compel production of discovery were filed against the state in 1999, and the state was ordered to produce all discovery within 20 days at that time.

13) Defendant asserts possible prejudice by newspaper reports, and other media coverage, past or present, influencing the jury, which have falsely declared the defendant to have been matched by DNA to at least 3 rape cases.

14) Defendant asserts that thirty-three days allows the opening for tampering with the jury, and that the temptation to do so is so great, that in no way can the defendant's trial be conducted with the fairness and security that the bill of rights contemplates.

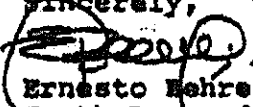
15) Defendant asserts that in a world where most people spend a large part of their day on the internet, thirty-three days presents too large of a window for curious jurors to delve into the defendant's current charges or past criminal convictions.

It is with great respect to this Honorable Court that this defendant requests that he not be asked to choose or risk his Constitutional rights to due process of law without prejudice, including a trial without interruption, in order to obtain his Constitutional rights for a speedy trial.

And therefore, after recontacting all witnesses since the last hearing of July 21, 2000, and finding them still unavailable, and whereby this defendant did formally object to any interruption in his trial and disagreed to any undue separation of jurors, and did ask the state to show good cause for such continuation, which they did not, does respectfully request that either the docket be rearranged to disallow prejudice or any other Constitutional violation by properly conducting a speedy trial without interruption within said limits, or by transferring this case to strike force or a judge who has the ability to provide justice within the law, as outlined.

This memorandum having been duly discussed with my defense counsel, and with agreement by them to help preserve my rights to the fullest extent of the law, including any further necessary actions, is respectfully submitted to the Honorable Judge Horowitz this 3rd day of August, 2000 for his prompt attention and reconsideration.

Sincerely,


Ernesto Behrens, #5098-6793
North Broward County Jail
1550 NW 30th Ave.
Pompano Beach, Florida 33069

Defense Counsel: Mr. Ty Terrell
489-2204

cc: Judge Rothschild
Dennis Siegel, P.A.
Clerk of Court

☒ 17th Judicial Circuit in and for Broward County
☐ In the County Court in and for Broward County

DIVISION:

☒ CRIMINAL
☐ TRAFFIC
☐ OTHER

HEARING PROCEEDING

CLOCK IN

Filed In Open Court,
CLERK OF THE CIRCUIT COURT

ON 8/9/00
BY K. Hays

THE STATE OF FLORIDA VS. Ernesto Behrens

CASE NUMBER

PLAINTIFF

DEFENDANT

98 5739CF10A

CHARGE/S

I. Armed Sexual Battery
II Burgl Battery

DATE AUG 09 2000

This case being called for hearing on Williams Rule,
the Defendant was not present in open Court with counsel Ty Terrell,
Esq. The State represented by Dennis Segal, Esq., Assistant State
Attorney. Court Reporter, Evelinda Rodriguez was also present.

The following witnesses were duly sworn and testified in this cause:

PROSECUTION

DEFENSE

[REDACTED]
Olsen

After due consideration, this court
GRANTED the Motion/s to _____

DENIED the Motion/s to Williams Rule motion

By: Karen Hays
Deputy Clerk

189

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

ERNESTO BEHRENS,
Defendant.

CASE NO. 98-5739CF10A

JUDGE: HOROWITZ

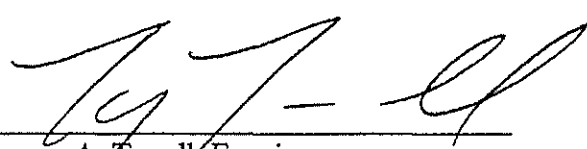
NOTICE OF EXPIRATION OF TIME FOR SPEEDY TRIAL

Defendant, through undersigned counsel, files this Notice of Expiration of Time for Speedy Trial, pursuant to Fla.R.Cr.P. 3.191(b) and (h), and says as follows:

1. Defendant was magistrated on March 28, 1998 and was charged with armed sexual battery and armed burglary
2. That on June 23, 2000, Defendant filed a Demand for Speedy Trial with this Court. A copy was also served on the State Attorney.
3. On August 9, 2000 a group of 30 prospective jurors were questioned by the Court without being sworn as required by Florida Rule of Criminal Procedure 3.300(a) and (b).
4. On August 10, 2000, the remaining prospective jurors were then sworn in by the Court regarding the previous day of conversation.
5. Therefore the Defendant has not been properly brought to trial within 50 days of the filing of the Demand for Speedy Trial and is, therefore, entitled to the appropriate remedy as set forth in Fla.R.Cr.P. 3.191(p).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was hand delivered to the Office of the State Attorney, Broward County Courthouse, Fort Lauderdale, Florida on this 25th day of August, 2000.


Tyrone A. Terrell, Esquire
Attorney for the Defendant
Florida Bar #0077976
1895 West Commercial Boulevard
Suite 135
Ft. Lauderdale, FL 33309
Phone: (954) 489-2204/Fax: 489-0637

☐ 17th Judicial Circuit in and for Broward County
☐ In the County Court in and for Broward County

DIVISION:
☒ Criminal
☐ Traffic
☐ Other

ORDER

Filed In Open Court,
CLERK OF THE CIRCUIT COURT
ON AUG 29 2000

BY Karen Hynes

THE STATE OF FLORIDA VS.

CASE NUMBER

Ernesto Behrens

DEFENDANT

98-5739 CF10A

CHARGE

The State of Florida's motion to strike the Defendant's Notice Of
Expiration Of Time For Speedy Trial is granted.

DONE AND ORDERED THIS 29th DAY OF August, 2000, IN
BROWARD COUNTY, FLORIDA.

[Signature]
JUDGE

COPIES: BSO - SAO

☐ 17th Judicial Circuit in and for Broward County
☐ In the County Court in and for Broward County

DIVISION:
☐ Criminal
☐ Traffic
☐ Other

ORDER

Filed In Open Court,
CLERK OF THE CIRCUIT COURT
ON AUG 29 2000

BY Karen Hays

THE STATE OF FLORIDA VS.

CASE NUMBER

ERNESTO BEHRENS

DEFENDANT

98-5739 CFW

CHARGE Armed Sexual Battery

It is hereby ordered that the above Defendant shall be properly dressed and clean shaven for trial during the week of September 10th through September 17th, 2000.

DONE AND ORDERED THIS 29 DAY OF August, 2000, IN

BROWARD COUNTY, FLORIDA.

[Signature]
JUDGE

COPIES: BSO - SAO

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO:98-5739CF10A

STATE OF FLORIDA,

:

JUDGE: HOROWITZ *FL*

Plaintiff,

:

vs.

:

STATE'S SUPPLEMENTAL DISCOVERY

ERNESTO BEHRENS

Defendant.

:

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to the provisions of Rule 3.220(b)(1)(A), of the Florida Rules of Criminal Procedure, as supplement to the State's previous submission(s) of discovery herein, submits the following amendments(s) or addition(s):

AMEND FOR CHANGE: JOHN SAUER, DELTA AIRLINES
100 TERMINAL DRIVE
FT LAUDERDALE, FL 33015

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail/hand delivery this 6 day of SEPTEMBER A.D. 2000. TO TYRONE TERRELL, ESQ. (FAXED) 1895 W. COMMERCIAL BLVD, SUITE 135, FT LAUD, FL 33309

MICHAEL J. SATZ

State Attorney

By: *Dennis Siegel*

DENNIS SIEGEL

Assistant State Attorney

FL Bar#258131

Broward County Courthouse

201 SE Sixth Street, Rm. 568

Fort Lauderdale, Florida 33301

Telephone: (954) 831-6933

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff.

vs.

Case Number: 98-5739CF10A
Judge: HOROWITZ

ERNESTO BEHRENS,
Defendant.

MOTION FOR DISCHARGE

Defendant, in the above cause, pro se, pursuant to Fla. R.Cr.P. 3.191(j) and (p)(3), moves this Court for an Order discharging Defendant from the crime alleged in the Information in the above-styled cause on the following grounds:

1. On August 25, 2000, the Defendant filed a Notice of Expiration of Time for Speedy Trial, as required by Fla. R.Cr.P. 3.191(a) and (h).

2. Defendant has not been brought to trial within fifteen (15) days from the date of the filing of a Notice Expiration of Speedy Trial or within ten (10) days of the hearing on said Notice, through no fault of Defendant.

WHEREFORE, the Defendant respectfully requests this Court to enter an Order forever discharging Defendant from the crime, pursuant to Fla. R.Cr.P. 3.191(p)(3).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand to the Office of the State Attorney, 201 S.E. 6th Street, Broward County, Florida 33301 on this 11th day of September, 2000.

Filed in Open Court,
CLERK OF THE CIRCUIT COURT
ON SEP 11 2000
BY [Signature]

[Signature]
Tyrone A. Terrell, Esquire
Attorney for the Defendant
Florida Bar #0077976
1895 West Commercial Boulevard
Suite 135
Ft. Lauderdale, FL 33309

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
BROWARD COUNTY, STATE OF FLORIDA

State of Florida

vs.

ERNESTO BEHRENS,

Defendant.

)

)

)

)

)

CASE NO: 98-5739CF10A

JUDGE: ROTHSCHEID

Filed in Open Court,
CLERK OF THE CIRCUIT COURT
ON SEP 11 2000
BY *Haven Payne*

MOTION IN LIMINE TO EXCLUDE TESTIMONY AND EVIDENCE

The Defendant, ERNESTO BEHRENS, through undersigned counsel, files this Motion as an objection to the State's use of testimony and/or evidence, which should be deemed inadmissible, and hereby moves this Honorable Court, in Limine, for an Order precluding the State from using any pleading, testimony, remarks, questions, or argument regarding evidence and/or testimony listed in this Motion.

This Motion in Limine is filed pursuant to Marion v. State, 283 So.2d 53 (Fla. 4th DCA 1973) and Franklin v. State, 229 So.2d 892, 895 (Fla. 3d DCA 1970) wherein the Court stated,

"If the defense objects to proffered evidence regarding other crimes as inadmissible because its sole relevance is to show propensity on the part of the accused to commit a crime, a trial court should then require the prosecution to show what relevance (other than propensity) the proffered evidence has to an issue of fact. The prosecution should be held to a strict standard of care, and if they do not meet that standard the proffered evidence should be excluded."

Further grounds for this Motion in Limine are found in Fla. Stat. § 90.403 (1997), which excludes evidence on the grounds of prejudice or confusion.

In order to determine these issues, the Court should conduct a pre-trial conference pursuant to Fla.R.Crim.P. 3.220(p) which provides, "The trial court may hold one or more pre-trial conferences, with trial counsel present, to consider such matters as will promote a fair and expeditious trial ..." Further, an Order in Limine is the proper way to handle the problem because disclosure of any of the testimony and evidence to the jury would be highly improper and

prejudicial to the Defendant. Even though the Court were to sustain an objection and instruct the jury not to consider such testimony, this would not be curative of the error, and said use may cause a mistrial.

EVIDENCE AND TESTIMONY THAT SHOULD BE EXCLUDED

1. The State may intend to call Siru Andelin, Keith Evans, or any other witness, which may testify to the Defendant's alleged fleeing from Florida or his knowledge that he was being looked for by the police. First, this evidence is irrelevant and highly prejudicial. Second, the State has indicated to the defense that it was not going to call these witnesses, and the Defense has relied on the State's assertion. Thus, to allow the State to call these witnesses would be prejudicial.
2. The State may intend to allow witnesses to testify regarding facts or circumstances from other cases or alleged acts allegedly committed by Ernesto Behrens. This should include any testimony regarding DNA comparisons made between the different cases. This evidence should be excluded because of the following:
 - a. The sole purpose of the introduction of the testimony and evidence is to prove bad conduct or mere criminal propensity.
 - b. The act does not constitute a crime.
 - c. There is insufficient evidence that the Defendant committed the act.
 - d. The act is logically irrelevant to any fact of consequence in this case.
 - e. The prosecution does not have a substantial, bona fide need for the testimony and evidence.
 - f. The testimony and evidence has insufficient probative value to outweigh its prejudicial character.
 - g. The testimony and evidence is not relevant or material to the proof of a fact in issue.
3. Any testimony by Mr. John Sauer, as the defense received this witness's name on

September 8, 2000, in violation of discovery rules.

4. Any testimony by Donna Marchese with regarding to statistical analysis of DNA.
In addition to testimony regarding any database searches for DNA matches with other cases involving Ernesto Behrens.
5. Any testimony regarding Ernesto Behrens being in custody.
6. Any testimony or questions of Dr. Duran regarding his history of alleged misconduct or license suspensions.
7. Other grounds to be argued ORE TENUS.

WHEREFORE, the Defendant respectfully notifies this Honorable Court of its objection to the testimony as stated and moves herein for the entry of an order prohibiting the State from using same in any pleading, testimony, remarks, questions or arguments which might inform the jury of such facts contained in this Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by hand to the Office of the State Attorney, Broward County Courthouse, Fort Lauderdale, Florida, this 11th day of September, 2000



Andrea Shelowitz, Esq.
Bar No. 0092622
Shelowitz & Shelowitz, P.A.
1895 West Commercial Blvd. Ste. 135
Ft. Lauderdale, FL 33309
(954) 489-2204

☒ 17th Judicial Circuit in and for Broward County
☐ In the County Court in and for Broward County

DIVISION:
☒ Criminal
☐ Traffic
☐ Other

RECORD OF TRIAL PROCEEDINGS

CLOCK IN

Filed In Open Court,
CLERK OF THE CIRCUIT COURT
ON SEP 14 2000

BY Harmon Harmon

THE STATE OF FLORIDA VS.

Ernesto Behrens

CASE NUMBER

PLAINTIFF

DEFENDANT

98-5739CF10A

CHARGES I - Armed Sex Batt JUDGE ALFRED J. HOROWITZ

II Burgl Dwell w Battery ARREST NO./S B598 6793

DATE/S 8/9/00

This case was called for Trial by Jury Court. The Defendant was not present in open Court

with without counsel, Ty Tennell / Andrea Shelowitz Esq.

The Prosecution was represented by Denis Segal Esq.

Court Reporter, Erlinda Rodriguez was also present.

The following Jurors were duly selected and Sworn, to-wit:

Manuel TORRES

Jeffrey Harmon

William Walker

Seth Sigal

Joel Hartnik

Dorcas Rivera

ALT: JO Ann Kettle

ALT: Olive Daye

PAGE 2

THE FOLLOWING WITNESSES WERE DULY SWORN AND TESTIFIED IN THIS CAUSE
TO WIT:

PROSECUTION

DEFENSE

M. Hanlon PL P.D.

Denise Wood

Jean Swaby

Archie Moore

Sharon Hinds

JOHN Butchko

Steve Gellen

Donna Marchese

Martin Tracey

Guy Durand

Paula Turgeon

BY:

Karen Haysie
DEPUTY CLERK

card #1

CIRCUIT COUNTY COURT — 17th JUDICIAL CIRCUIT

EXHIBIT LIST

CASE #: 98 5739 CF10A DIV. FP CHARGES: armed sea Batt
Burg Dwell w Batt
ARRESTING AGENCY: BSD INCIDENT NUMBER: B.5 98 0793
NAME / STYLE: Ernesto Behrens
CLERK K. Haynie JUDGE A. Horowitz VERDICT: I-II guilty
TYPE OF CASE / HEARING Jury Trial DATE _____ SENTENCE - DISPOSITION _____
STATE / PLTF ATTORNEY D. Segal PHONE NO. _____ DEFENSE ATTORNEY T. Terrell PHONE NO. _____
INVENTORY LOCATION: _____

CASE NUMBER	DESCRIPTION OF EXHIBITS	STATE - PLTF	DEFENSE	COURT	CONTROL NUMBER
		EXHIBIT #	EXHIBIT #	EXHIBIT #	
98 5739 CF10A	18 Photos Composite Roll 1 (Film)	1 ✓	B ✓		
	21 Photos Composite Roll 2 (Film)	2 ✓	B ✓		
	18 Photos Composite Roll 3 (Film)	3 ✓			
	Comforter	4 ✓			
	1 Bed Sheet (TOP SHEET)	5 ✓			
	1 Pillowcase	6 ✓			
	1 DRESS	7 ✓			
	1 Fitted Bed sheet	8 ✓			
	Composite shoe cast (3) (3)	9 ✓			
	Composite shoe prints (4)	10 ✓			
	7 Composite Finger Prints	11 ✓			
	Latent Finger Prints	12 ✓			
		13 ✓			
		14 ✓			
		15 ✓			

COMPLETE THIS SECTION IF EVIDENCE RETURNED IN COURT.

DATE _____ RECEIVER _____ I.D.# _____ JUDGE _____
CLERK _____

200

EVIDENCE RECEIVED DATE 9-14-00

COURT CLERK K. Haynie

EVIDENCE CLERK Karen J. [Signature]
PAGE _____ OF _____

EXHIBIT LISTCASE #: 98 5739 CF10A DIV. FP CHARGES: _____

ARRESTING AGENCY: _____ INCIDENT NUMBER: _____

NAME / STYLE: Genesto BehrensCLERK K. Haynie JUDGE A. Horowitz VERDICT: ET guilty

TYPE OF CASE / HEARING _____ DATE _____ SENTENCE - DISPOSITION _____

STATE / PLTF ATTORNEY _____ PHONE NO. _____ DEFENSE ATTORNEY _____ PHONE NO. _____

INVENTORY LOCATION: _____

DESCRIPTION OF EXHIBITS

STATE -
PLTF
EXHIBIT #DEFENSE
EXHIBIT
#COURT
EXHIBIT
#CONTROL
NUMBER

Photos Blown-up

1 ✓

2 ✓

3 ✓

4 ✓

5 ✓

6 ✓

7 ✓

8 ✓

9 ✓

Slides & swabs composite

16 ✓

Consent Form

17 ✓

Property Receipt TO Criminals

18 ✓

Listing of Items

19 ✓

Swabs (2)

20 ✓

was marked states 21
from 6-3-99

CASE #

97-22091 CF10A

COMPLETE THIS SECTION IF EVIDENCE RETURNED IN COURT.

DATE

RECEIVER

I.D.#

JUDGE

CLERK

201

EVIDENCE RECEIVED
DATECOURT
CLERKEVIDENCE
CLERK

PAGE ____ OF ____

CARD #3

CIRCUIT COUNTY COURT — 17th JUDICIAL CIRCUIT

EXHIBIT LISTCASE #: 98 5739CF10ADIV. FP

CHARGES: _____

ARRESTING AGENCY: _____ INCIDENT NUMBER: _____

NAME / STYLE: Ernesto BehrensCLERK: _____ JUDGE A. HorowitzVERDICT: GuiltyTYPE OF
CASE / HEARING _____

DATE _____

SENTENCE -
DISPOSITION _____STATE / PLTF
ATTORNEY _____PHONE
NO. _____DEFENSE
ATTORNEY _____PHONE
NO. _____

INVENTORY LOCATION: _____

CASE NUMBER	DESCRIPTION OF EXHIBITS	STATE - PLTF EXHIBIT #	DEFENSE EXHIBIT #	COURT EXHIBIT #	CONTROL NUMBER
98 5739CF10A	Dry Down Sample	21 ✓			
	Cutting from sheet	22 ✓			
		23 ✓			
		24 ✓			
	Photos blown up		10 ✓		
			11 ✓		
			12 ✓		
	Medical Records		13 ✓		
	Transcript Transcript MED REC		14 ✓		
	Prescription		15 ✓		

COMPLETE THIS SECTION IF EVIDENCE RETURNED IN COURT.

DATE _____

RECEIVER _____

I.D.# _____

JUDGE _____

CLERK _____

EVIDENCE RECEIVED
DATE 9-14-00COURT
CLERK K. HayEVIDENCE
CLERK K. Hay

PAGE _____ OF _____

202

Judge Alfred J. Horowitz

State of Florida vs. _____

Case Number _____

WE THE JURY IN THE ABOVE TITLED CASE WOULD LIKE THE FOLLOWING:

(PLEASE CHECK ONE)

1.) TO ASK THE FOLLOWING QUESTION(S) ☒ _____

2.) WE WOULD LIKE TO VIEW THE EVIDENCE ON THIS CASE ☐ _____

PLEASE WRITE OUT THE ENTIRE QUESTIONS(S) IN THE SPACE PROVIDED BELOW. THEN RING THE BELL FOR THE DEPUTY. THANK YOU.

Can we take a 15 min break

Filed In Open Court,
CLERK OF THE CIRCUIT COURT

ON

SEP 14 2000

BY

[Signature]

SIGNED

FOREPERSON PLEASE PRINT YOUR NAME

DATE

[Signature]
Dorcas Rivera
9/14/00

Judge Alfred J. Horowitz

State of Florida vs. _____

Case Number _____

WE THE JURY IN THE ABOVE TITLED CASE WOULD LIKE THE FOLLOWING:

(PLEASE CHECK ONE)

1.) TO ASK THE FOLLOWING QUESTION(S) ☒ _____

2.) WE WOULD LIKE TO VIEW THE EVIDENCE ON THIS CASE _____

PLEASE WRITE OUT THE ENTIRE QUESTIONS(S) IN THE SPACE PROVIDED BELOW. THEN RING THE BELL FOR THE DEPUTY. THANK YOU.

Can we have the written (manual)
testimony of Detective Moore? and
previous depositions?

Is the list of all 3000 or 5000
DNA samples (suspects) available & can
we see it?

SIGNED _____

FOREPERSON PLEASE PRINT YOUR NAME _____

DATE _____

Dorcas Rivers
Dorcas Rivers
9/14/00

Filed In Open Court,
CLERK OF THE CIRCUIT COURT
ON SEP 14 2000
BY *H. Haynes*

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 98-5739 CF10 (A)

JUDGE: Alfred J. Horowitz

STATE OF FLORIDA,

Plaintiff,

vs.

VERDICT

ERNESTO BEHRENS,

Defendant.

COUNT I

WE, THE JURY, find as follows as to the Defendant in this case: (Check only one)

☒ A. The Defendant is Guilty of Sexual Battery-Armed, as charged in the Information.

☐ B. The Defendant is Not Guilty.

SO SAY WE ALL, this 14 day of September, A.D. 2000, at Fort Lauderdale,
Broward County, Florida.

Filed In Open Court,
CLERK OF THE CIRCUIT COURT

ON

9/14

BY

H. Wayne

[Signature]
FOREPERSON

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 98-5739 CF10 (A)

JUDGE: Alfred J. Horowitz

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

VERDICT

COUNT II

WE, THE JURY, find as follows as to the Defendant in this case: (Check only one)

☒ A. The Defendant is Guilty of Burglary of a Dwelling with a Battery, as charged in the Information.

☐ B. The Defendant is Not Guilty.

SO SAY WE ALL, this 14 day of September, A.D. 2000, at Fort Lauderdale,
Broward County, Florida.


FOREPERSON

Filed In Open Court,
CLERK OF THE CIRCUIT COURT
ON 9/14/00
BY H. Hays

☐ 17th Judicial Circuit in and for Broward County
☐ In the County Court in and for Broward County

Filed In Open Court,
CLERK OF THE CIRCUIT COURT

ON SEP 14, 2000

BY Kawthar

DIVISION:

☐ Criminal
☐ Traffic
☐ Other

ORDER

THE STATE OF FLORIDA VS.

CASE NUMBER

Ernesto Behrens

DEFENDANT

98-5739F

CHARGE A

The Court finds that Ernesto Behrens has been previously declared indigent, and is currently indigent.

Therefore, the costs for the ordering of transcript testimony from 9/12/00 shall be paid for by the County.

These transcripts shall be ready by 9/14 at 9 A.M. Specifically the transcript of Detective Moore.

DONE AND ORDERED THIS 13th DAY OF Sept, 2000, IN

BROWARD COUNTY, FLORIDA.

[Signature]
JUDGE

COPIES: BSO - SAO

207

State of FLA vs Ernesto Behrens
Case # 98 5739 CF10A

State: Denis Segal

Defense: Ty Terrell & Andrea Shelowitz

JCC: Karen Haynie

CLK: C. Jasik // Erlinda Rodriguez

8/9/00 Voir Dire started at 2³⁰ pm

8/10/00 Voir Dire Ends // Jury Sworn ^{NOT} 4:40 pm Ct in recess
until 9-11-00 1³⁰ pm

SEP 11 2000

Ct Resumed at 1³⁰ pm Pre-trial motions Heard
MOT For Discharge and to strike the panel // Denied
2:10 pm Jury Sworn Openings by atty's
State calls its 1st witness Marjorie Hanton Plant P.
5³⁰ Ct in Recess until 9⁰⁰ am

SEP 12 2000

^{9:30 am} Ct Resumed ~~4th~~ day State calls its 2nd witness Denise W.
12:10 Ct in Recess until 1⁰⁰

1³⁰ Ct Resumes Trial continues

State calls its 3rd witness Jean Swaby

State calls its 4th witness Archie Moore

State calls its 5th witness Sharon Hinz

5³⁰ Ct in Recess until 9⁰⁰

SEP 13 2000

Ct Resumes at 9⁰⁰ Day 5 of Trial

Trial Testimony continues

State calls its 6th witness John Butchko

State calls its 7th witness Steve Geller

State calls its 8th witness Donna Marchese

12⁰⁰ Ct in Recess until 1³⁰ for lunch

1³⁰ Ct Resumes Trial continues

State calls its 9th witness Martin Tracey 208

4:15 State Rest Def Motion J.O.A TO BE DONE 8³⁰ am

SEP 14 2000

Ct Resumed at 8³⁰ for Defense's case

Filed In Open Court,
CLERK OF THE CIRCUIT COURT

ON SEP 14 2000

BY Karen Haynie

Def motion J.O.A Denied.

Def calls its 1st witness Dr Guy Durand
states motion in Limine Grants

Def calls its 2nd witness Paula Turgeon

Def Rest outside presence of Jury Renew Mot J.O.A/Denied
Ct Recessed until 130

Ct Resumed 240 State & Def both Rest

Closing began by attys

Judge's instructions

Alternates excused 4:52 Jury TO Deliberations

538 Question from panel

605 Question from panel

700 Verdicts Read

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

FELONY
2000 SEP 19 PM 2:40

RECEIVED
CLERK, CIRCUIT COUNTY COURT
BROWARD COUNTY, FL.

CASE NO: 98-5739CF10A

JUDGE: Alfred Horowitz

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

**MOTION TO IMPOSE SENTENCE WHICH IS UPWARD DEPARTURE FROM
RECOMMENDED GUIDELINE SENTENCE**

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and respectfully moves this Honorable Court, pursuant to F.S. 921.0016(3) (1995), to impose a sentence upon the Defendant which would constitute an upward departure from the recommended guidelines sentence in this case, and as grounds states the following:

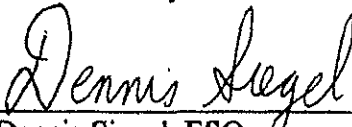
1. On September 14, 2000, the Defendant was found guilty by a jury of Sexual Battery - Armed and Burglary Of A Dwelling With A Battery.
2. The recommended guideline sentencing range appears to be 115.8 months to 190 months state prison.
3. Pursuant to F.S. 921.0016(3)(r)(1995), the aggravating circumstance exists, which reasonably justifies an upward departure sentence, that the primary offense of which the Defendant was convicted is a level ten offense, and the Defendant has previously been convicted of two counts of Armed Burglary, level eight offenses.

4. The Defendant was convicted of two counts of Conspiracy To Possess Stolen Property in the District Court of Clark County, Nevada, in case number 97-C-146497 on or about March 3, 1998, which offenses do not constitute prior convictions and are thus unscorable. Unscorable convictions constitute a valid aggravating circumstance to upwardly depart from the recommended sentencing guideline range. Smith v. State, 515 So. 2d 182 (Fla.1987), *cert. denied*, 485 U.S. 971, 108 S.Ct. 1249, 99 L.Ed. 2d 447(1988); Freeman v. State, 663 So. 2d 675 (Fla. 4th DCA 1995).
5. The Defendant entered a plea of guilty to an information charging him with Grand Theft in the Circuit Court of the 15th Judicial Circuit of Florida in case number 95-9832CF A02 on May 29, 1996, which offense does not constitute a prior conviction and is thus unscorable. Unscorable convictions constitute a valid aggravating circumstance to upwardly depart from the recommended sentencing guidelines range. Smith, supra; Freeman, supra.
6. The sexual battery for which the Defendant was convicted clearly evidenced heightened premeditation or calculation which justifies an upward departure sentence. Marcott v. State, 650 So. 2d 977 (Fla.1995).

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/hand delivery this 19 day September of , 2000, to: Tyrone A. Terrell, ESQ., 1895 W. Commercial Blvd., Suite 135, Fort Lauderdale, Fl 33309

MICHAEL J. SATZ
State Attorney

By:


Dennis Siegel, ESQ.
Assistant State Attorney
Florida Bar #258131
201 S.E. Sixth Street, Suite 568
Fort Lauderdale, Florida 33301
(954) 831-6933
FAX: (954) 831-6936

Ch

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 98-5739CF10A

JUDGE: ALFRED HOROWITZ

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

MOTION TO COMPEL STANDARD FINGERPRINTS

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and respectfully moves this Honorable Court, pursuant to Rule 3.220(c)(1) (C) of the Florida Rules Of Criminal Procedure, to compel the Defendant to submit to the taking of his standard fingerprints for the purpose of comparing his standard fingerprints to the fingerprints affixed to the judgment of conviction and findings of guilt in prior cases of the Defendant, and as grounds states the following:

1. The State of Florida is seeking to have this Court upwardly depart from the recommended sentencing guidelines in this case, and has cited as one of the reasons for doing so that the Defendant has unscorable convictions as that term is defined under Florida Statute 921.0011(2).
2. The Defendant has unscorable prior convictions with attached fingerprints.


State of Florida v. ERNESTO BEHRNES
MOTION TO COMPEL FINGERPRINTS
CASE NO: 98-5739CF10A
JUDGE: ALFRED HOROWITZ
Page 2 of 2

3. It is necessary to compare the fingerprints attached to the convictions in these cases to the Defendant's standard fingerprints to establish whether the Defendant was the individual who was convicted in these cases.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mailhand delivery this 25 day of September, 2000, to: TYRONE A. TERRELL ESQ., 1895 W. Commercial Blvd., Suite 135, Fort Lauderdale, FL 33309.

MICHAEL J. SATZ
State Attorney

By:


Dennis Siegel, ESQ.
Assistant State Attorney
Florida Bar #258131
201 S.E. Sixth Street, Suite 568
Fort Lauderdale, Florida 33301
(954) 831-6933
FAX: (954) 831-6936

DSL:jf 09-25-04

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 98-5739CF10A
JUDGE: ALFRED HOROWITZ

STATE OF FLORIDA,

Plaintiff,

VS.

ERNESTO BEHRENS,

Defendant.

FELONY
2000 SEP 28 PM 3:22
RECEIVED
CLERK, CIRCUIT COURT
BROWARD COUNTY, FL.

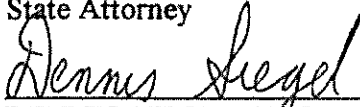
**MOTION IN LIMINE TO DETERMINE IF COURT
WILL ENTERTAIN A STATEMENT AT SENTENCING**

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and respectfully moves this Honorable Court to determine whether it will entertain at the sentencing hearing herein a statement from [REDACTED] and/or her father concerning the impact of the Defendant's criminal acts upon her and the nature of those acts. It must be noted that the Defendant was charged with two counts of Sexual Battery-Armed and Burglary With A Battery in case number 97-22091CF10A for those acts and was found not guilty by a jury.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/hand delivery this 28th day of September, 2000, to: TYRONE A. TERRELL ESQ., 1895 W. Commercial Blvd., Suite 135, Fort Lauderdale, Fl 33309

MICHAEL J. SATZ
State Attorney

By:


DENNIS SIEGEL, ESQ.
Assistant State Attorney
Florida Bar #258131
201 S.E. Sixth Street, Suite 568
Fort Lauderdale, Florida 33301
(954) 831-6933
FAX: (954) 831-6936

IN THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN AND FOR BROWARD
COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

ERNESTO BEHRENS

CASE NO.: 98-5739CFIDA

JUDGE: Rothschild

OCT - 2

FILED
BROWARD COUNTY, FL.

FILE ONLY - NOT FOR PROCESSING
AS PER COURT ADMINISTRATION

**ORDER FOR REIMBURSEMENT WHERE DEFENDANT HAS BEEN DECLARED
INDIGENT FOR COSTS**

THIS CAUSE having come on for consideration by the Court upon the submission of an original sworn Motion for Order for Costs by TYRONE A. TERRELL, Esq., Attorney for Defendant, pursuant to the Order Declaring Defendant Indigent for costs entered herein on MARCH 13TH, 2000, and the Court having reviewed the Motion for Order for Costs and finding that the costs set forth therein comply with the provisions of the aforesaid Order Declaring Defendant Indigent for Costs, it is, therefore

ORDERED AND ADJUDGED that the Broward County Board of County Commissioners shall pay to TYRONE A. TERRELL, Esq., the total sum of \$ \$551.34 549.96 ^{9/25/00} _{as} reimbursement for allowable costs expended in the above-captioned cause. A copy of the Order Declaring Defendant Indigent for Costs, and copy of Judgment/Lien for Attorney's Fees and Costs are attached hereto and made a part hereof.

DONE AND ORDERED in Chambers, at the Broward County Courthouse, Fort Lauderdale, Florida on this 26th day of September, 2000.

CIRCUIT/COUNTY JUDGE

TYRONE A. TERRELL

Attorney for Defendant

1895 WEST COMMERCIAL BOULEVARD
SUITE 135
FORT LAUDERDALE, FLORIDA 33309

Address

65-0937535

Social Security/Tax ID #

APPROVED FOR PAYMENT

AMOUNTS CHARGED TO INDEX SUB
0010-029-2321-4923 \$549.96

PER: [Signature] DATE:
COURT ADMINISTRATOR'S OFFICE

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

FELONY

CASE NO: 98-5739CF10A

STATE OF FLORIDA,

JUDGE: HOROWITZ

2000 OCT -2 PM 3:34
RECEIVED
CLERK, CIRCUIT COURT
BROWARD COUNTY, FL.
Plaintiff, COUNTY, FL.

vs.

: STATE'S SUPPLEMENTAL DISCOVERY

ERNESTO BEHRENS

Defendant.

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to the provisions of Rule 3.220(b)(1)(A), of the Florida Rules of Criminal Procedure, as supplement to the State's previous submission(s) of discovery herein, submits the following amendments(s) or addition(s): AMENDED AS FOLLOWS:

CHARMAINE CENTRON
BSO FINGERPRINTS AT JAIL

TERRY TROUT
BSO COURT DEPUTY
201 SE 6TH STREET
FT LAUD, FL 33301

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail/hand delivery this 2nd day of OCTOBER A.D. 2000. TO TYRONE TERRELL, ESQ. 1895 W. COMMERCIAL BLVD., SUITE 135 FT LAUD FL 33309

MICHAEL J. SATZ
State Attorney

By: Dennis Siegel
DENNIS SIEGEL
Assistant State Attorney
FL Bar#258131
Broward County Courthouse
201 SE Sixth Street, Rm. 568
Fort Lauderdale, Florida 33301
Telephone: (954) 831-6933

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO:98-5739CF10A

STATE OF FLORIDA,

:

JUDGE: HOROWITZ

Plaintiff,

:

vs.

:

STATE'S SUPPLEMENTAL DISCOVERY

ERNESTO BEHRENS,

Defendant.

:

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to the provisions of Rule 3.220(b)(1)(A), of the Florida Rules of Criminal Procedure, as supplement to the State's previous submission(s) of discovery herein, submits the following amendments(s) or addition(s):

AMEND TO INCLUDE THE FOLLOWING:

Comparison For SAO Form re case number 95-9832CFA02

Fingerprints Of Defendant-case number 98-5739CF10A

Fingerprints Of Defendant-case number 95-9832CFA02

Judgment- case number 95-9832CFA02

Information- case number 95-9832CFA02

Comparison For SAO form re 90-1320CF10A

Judgment-case number 90-1320CF

Fingerprints Of Defendant- case number 98-5739CF10A

Fingerprints Of Defendant- case number 90-1320CF10

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail/hand delivery this 4th day of October 2000. TO Tyrone Terrell, Esq, 1895 W Commercial Blvd., Suite 135, Ft Lauderdale, FL 33309

MICHAEL J. SATZ

State Attorney

By: Dennis Siegel

DENNIS SIEGEL

Assistant State Attorney

FL Bar#258131

Broward County Courthouse

201 SE Sixth Street, Rm. 568

Fort Lauderdale, Florida 33301

Telephone: (954) 831-6933

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 98-5739 CF10A

JUDGE: ALFRED HOROWITZ

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

FILED
2000 OCT -5 PM 3:12
CLERK CIRCUIT COURT
BROWARD COUNTY, FL.

REQUEST FOR JUDICIAL NOTICE

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and respectfully moves this Honorable Court, pursuant to F.S. 90.202 and F.S. 90.203, to take judicial notice of the testimony of [REDACTED] and Detective Ole Olsen which was provided to the Court during a hearing on the admissibility of other crimes evidence pursuant to F.S. 90.404 on August 9, 2000, and as grounds states the following:

1. F.S. 90.202 permits a court to take judicial notice of the records of the court.
2. F.S. 90.203 requires a court to take judicial notice of any matter in F.S. 90.202 when the adverse party is given timely written notice of the request, and the party requesting judicial notice furnishes the court with sufficient information to enable it to take judicial notice of the matter.

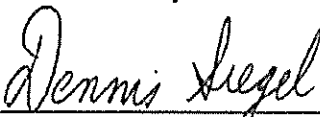
STATE OF FLORIDA v. ERNESTO BEHRENS
CASE NO: 98-5739CF10A
JUDGE: ALFRED HOROWITZ
REQUEST FOR JUDICIAL NOTICE
PAGE 2 OF 2

3. Testimony given during a prior hearing in the same matter constitutes records of the court for which judicial notice is appropriate. State v. Romanez, 543 So.2nd 323 (Fla. 3rd DCA 1989). The testimony of Ms. [REDACTED] and Detective Olsen pertain to other criminal offenses of the nature of a Burglary Of A Dwelling and a Sexual Battery which were committed by this Defendant. Pursuant to Jansson v. State, 399 So.2nd 1061 (Fla. 4th DCA 1981), this burglary and sexual battery incident is relevant and pertinent to, and admissible at, the sentencing of the Defendant in this matter.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/hand delivery this 4th day of October, 2000, to: Tyrone A. Terrell ESQ., 1895 W. Commercial Blvd., Suite 135, Fort Lauderdale, Fl 33309

MICHAEL J. SATZ
State Attorney

By:


DENNIS SIEGEL, ESQ.
Assistant State Attorney
Florida Bar #258131
201 S.E. Sixth Street, Suite 568
Fort Lauderdale, Florida 33301
(954) 831-6933
FAX: (954) 831-6936

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

FELONY

CASE NO:98-5739CF10A

STATE OF FLORIDA, 2000 OCT -6 PM 3:44

JUDGE:HOROWITZ

RECEIVED
1998 CIRCUIT COUNTY COURT
BROWARD COUNTY, FL.

vs.

STATE'S SUPPLEMENTAL DISCOVERY

ERNESTO BEHRENS

Defendant.

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to the provisions of Rule 3.220(b)(1)(A), of the Florida Rules of Criminal Procedure, as supplement to the State's previous submission(s) of discovery herein, submits the following amendments(s) or addition(s): AMEND TO INCLUDE:

JUDGEMENT OF CONVICTION (PLEA) FROM THE DISTRICT COURT OF CLERK COUNTY, NEVADA

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail/hand delivery this 5th day of OCTOBER 2000. TO TYRONE TERRELL, ESQ. 1895 W. BROWARD BLVD, SUITE 135, FT LAUDERDALE, FL 33309

MICHAEL J. SATZ

State Attorney

By:

Dennis Siegel
DENNIS SIEGEL

Assistant State Attorney

FL Bar#258131

Broward County Courthouse

201 SE Sixth Street, Rm. 568

Fort Lauderdale, Florida 33301

Telephone: (954) 831-6933

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

2000 OCT 10 PM 3:58

CASE NO:

98-5739 CF10 (A)

RECEIVED
CLERK, CIRCUIT COUNTY COURT
BROWARD COUNTY JUDGE

ALFRED HOROWITZ

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION IN
LIMINE TO DETERMINE IF COURT WILL ENTERTAIN A
STATEMENT AT SENTENCING**

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and respectfully files this Memorandum Of Law In Support Of Motion In Limine To Determine If Court Will Entertain A Statement At Sentencing as follows:

In case number 97-22091CF10A, the Defendant was charged with two counts of Sexual Battery-Armed and one count of Burglary With A Battery. The evidence presented by the State of Florida at the trial of this case showed that the victim, [REDACTED] finished her morning shower in her home in Coral Springs, Florida, in preparation for work, at approximately 6:00 a.m. on October 21, 1993. As she was preparing to leave the shower, a stranger who had broken into her home accosted her while wielding a sharp object. The man wrapped Ms. [REDACTED]

CE/EC/11

State of Florida v. ERNESTO BEHRENS

Case Number 98-5738CF10A

Judge ALFRED HOROWITZ

**MEMORANDUM OF LAW IN SUPPORT OF MOTION IN
LIMINE TO DETERMINE IF COURT WILL ENTERTAIN A
STATEMENT AT SENTENCING**

Page 2 of 7

face in a shower curtain. He maneuvered her into her bedroom where her face became momentarily uncovered and she saw his face. The man covered her face again, and threatened Ms. [REDACTED] by telling her that someone was with her son, who was asleep in another bedroom, and would hurt him. He then maneuvered her into her closet where he began to kiss her and fondle her breasts. He then had her lie on the floor where he tried to put his penis into her vagina. He then performed oral sex upon her, and then masturbated himself. He then inserted his penis into Ms. [REDACTED] vagina. He ultimately withdrew his penis from her vagina and ejaculated onto her abdomen. He fled and Ms. [REDACTED] called the police. When Ms. [REDACTED] was examined at the SATC, it was noted that she had fresh tears to her rectum and perineum.

Subsequently, Ms. [REDACTED] was shown a photographic lineup, and she identified the Defendant's photograph as the individual who had broken into her home and sexually assaulted her. DNA extracted from the semen in her vagina and on her abdomen was compared to the Defendant's DNA, and they matched. A warrant was issued for the Defendant's arrest, and he was captured in Las Vegas¹. The Coral Springs detective flew to Las Vegas and interviewed the Defendant. He initially denied the sexual assault, and was then confronted by the Coral Springs detective with the

¹ Although this was not adduced as evidence at the trial, it should be noted that the Defendant was arrested in Las Vegas because of a burglary that he had committed there.

State of Florida v. ERNESTO BEHRENS

Case Number 98-5738CF10A

Judge ALFRED HOROWITZ

**MEMORANDUM OF LAW IN SUPPORT OF MOTION IN
LIMINE TO DETERMINE IF COURT WILL ENTERTAIN A
STATEMENT AT SENTENCING**

Page 3 of 7

DNA evidence, the fact that the victim had identified him in a photographic line-up and accused of committing the sexual battery. The Defendant nodded in the affirmative and began crying.

The Defendant presented a defense in which he denied committing the sexual battery and breaking into Ms. [REDACTED] home. He presented evidence that he had met the victim at a gas station on the Saturday before the Thursday rape and they discussed a business transaction. They met again the following Monday evening and discussed personal issues. They subsequently engaged in vaginal intercourse during the early morning hours of Tuesday. The Defendant testified concerning personal information about the victim. At the trial, the jury found the Defendant not guilty.

Ms. [REDACTED] and/or her father wish to address the Court during the sentencing hearing in this case. They have no knowledge of the crime involved in this case, but wish to present evidence of what they assert the Defendant did to Ms. [REDACTED] and what they believe an appropriate punishment should be in this case. The Court, of course, is at liberty to partially or completely disregard what they would say in formulating the appropriate sentence for the Defendant in this case. Rule 3.720(b) of the Florida Rules of Criminal Procedure states that the sentencing court "shall entertain submissions and evidence by the parties that are relevant to the sentence." The United States Supreme Court has stated that "[t]he sentencing court or jury must be permitted to

State of Florida v. ERNESTO BEHRENS

Case Number 98-5738CF10A

Judge ALFRED HOROWITZ

**MEMORANDUM OF LAW IN SUPPORT OF MOTION IN
LIMINE TO DETERMINE IF COURT WILL ENTERTAIN A
STATEMENT AT SENTENCING**

Page 4 of 7

consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.” Wasman v. United States, 468 U.S. 559, 563, 104 S.Ct. 3217, 3220; 82 L.Ed.2nd 424, ____ (1984). In Williams v. New York, 337 U.S. 241, 69 S.Ct. 1079, 93 L.Ed. 1337 (1949), the Court discussed how rigid rules of evidence applicable to the guilt phase of a criminal trial are inappropriate for and inapplicable to sentencing decisions.

F.S. 921.231 discusses the contents of a presentence investigation report which a court may consider in sentencing, and the sweeping breadth of information that a full report should include. As the United States Supreme Court has written concerning the federal equivalent of such reports, “[t]here are no formal limitations on their contents, and they may rest on hearsay and contain information bearing no relation whatever to the crime with which the defendant is charged.” Gregg v. United States, 394 U.S. 489, 492; 89 S.Ct. 1134, 1136; ____ L.Ed. 2nd ____ (1969). The only limitation established by rule or Florida Supreme Court opinion on the type of information that a court can receive to determine an appropriate sentence is relevancy. F.R.Cr.P 3.720(b): Buford v. State, 403 So.2nd 943, 950 (Fla. 1981), cert. denied, 454 U.S. 1163, 102 S.Ct. 1037, 71 L.Ed.2d 319 (1982). The determination of what is relevant is within the

State of Florida v. ERNESTO BEHRENS

Case Number 98-5738CF10A

Judge ALFRED HOROWITZ

**MEMORANDUM OF LAW IN SUPPORT OF MOTION IN
LIMINE TO DETERMINE IF COURT WILL ENTERTAIN A
STATEMENT AT SENTENCING**

Page 5 of 7

sentencing court's discretion. Christopher v. State, 407 So.2nd 198 (Fla. 1981), cert.denied, 456 U.S. 910, 102 S.Ct. 1761, 72 L.Ed.2d 169 (1982).

The Fourth District Court Of Appeal has written:

a trial court can consider a defendant's prior arrests not leading to convictions for purposes of sentencing so long as the court recognizes that these arrests are not convictions or findings of guilt, and the defendant is given an opportunity to explain or offer evidence on the issue of his prior arrests. We are further persuaded to this view by Section 921.231, Florida Statutes (1979), which prescribes the contents of a presentence investigation report in Florida. This report is, by definition, of a hearsay nature, and is to include a complete description of the circumstances surrounding the criminal activity in question. It is also to include a description of the offender's educational background, his employment background, his military record, his employment history, along with his social history, including the broadest consideration possible. In our opinion, if a court can consider a hearsay report of a defendant's social, educational, medical, psychiatric, and psychological history, it should also be able to consider the individual's arrest record so long as it is accurate and the opportunity to explain or otherwise rebut it is given.

Jansson v. State, 399 So.2nd 1061, 1064 (Fla. 4th DCA 1981). The rule in Jansson has been followed by the First District Court Of Appeal in Crosby v. State, 429 So.2nd 421 (Fla.1st DCA 1983). Many courts throughout the country have held that a sentencing court may consider evidence of crimes for which a defendant has been acquitted. United States v. Morgan, 595 F.2nd 1134 (9th Cir. 1979); United States v. Cardi, 519 F. 2nd 309 (7th Cir.1975); State v. Huey, 199 Conn. 121, 505 A.2nd 1242 (1986); State v. Kelly, 122 Ariz.495, 595 P.2nd 1040 (1979);

State of Florida v. ERNESTO BEHRENS

Case Number 98-5738CF10A

Judge ALFRED HOROWITZ

**MEMORANDUM OF LAW IN SUPPORT OF MOTION IN
LIMINE TO DETERMINE IF COURT WILL ENTERTAIN A
STATEMENT AT SENTENCING**

Page 6 of 7

State v. Wilcox, 20 Wash. App. 617, 581 P.2nd 596 (1978); People v. Griffin, 32 Cal. Rptr. 24, 383 P. 2nd 432 (1963), reversed on other grounds 380 U.S. 609, 85 S.Ct. 1229, ___ L.Ed.2d ___ (1965). See also 96 ALR 2nd 768-818.

Two Florida decisions have ruled that evidence of criminal conduct for which a defendant has been acquitted may not be considered at a sentencing for a different offense. Epprecht v. State, 488 So.2nd 129 (Fla. 3rd DCA 1986); Cook v. State, 647 So.2nd 1066 (Fla. 3rd DCA 1984). The Fourth District Court of Appeal in Reese v. State, 639 So.2d 1067 (Fla. 4th DCA 1994) affirmed the continued vitality of Jansson but disallowed the use of speculation of uncharged misconduct by the defendant which is unsupported by evidence. In Berry v. State, 458 So.2nd 1155 (Fla. 1st DCA 1984), the trial court improperly considered crimes of which the defendant was acquitted when it believed that the defendant was actually guilty of those crimes.

The State of Florida strongly urges this Court to allow Ms. [REDACTED] and/or her father to speak at the sentencing in this case. The Defendant has notice of their desire to speak concerning the crimes committed against her and their impact upon her, and has every opportunity to offer evidence in response to what they may say. Furthermore, the Court has been advised that the Defendant was found not guilty of the crimes committed against Ms. [REDACTED]. The Court is free

State of Florida v. ERNESTO BEHRENS

Case Number 98-5738CF10A

Judge ALFRED HOROWITZ

**MEMORANDUM OF LAW IN SUPPORT OF MOTION IN
LIMINE TO DETERMINE IF COURT WILL ENTERTAIN A
STATEMENT AT SENTENCING**

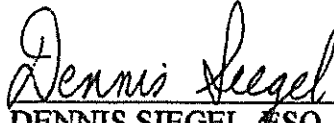
Page 7 of 7

to give as little weight as it wishes, or none at all, to their statements. The acquittal represents a finding that six particular jurors did not believe that the evidence presented by the State of Florida at the trial of the matter proved the Defendant guilty beyond a reasonable doubt. Nothing in the statutory, procedural, or decisional law states that a sentencing court can only consider facts and evidence that have been proven beyond a reasonable doubt in pronouncing a sentence. A sentencing court is free to consider matters that have not been proven to that degree as long as those matters are relevant. Accordingly, this Court should allow Ms. [REDACTED] and/or her father to address it and speak about the crimes committed against Ms. [REDACTED] and their impact upon her.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/hand delivery this 5th day of October, 2000, to: Tyrone A. Terrell, ESQ., 1895 West Commercial Boulevard, Suite 135, Fort Lauderdale, Florida 33309

MICHAEL J. SATZ
State Attorney

By:


DENNIS SIEGEL, ESQ.
Assistant State Attorney
Florida Bar #258131
201 S.E. Sixth Street, Suite 568
Fort Lauderdale, Florida 33301
(954) 831-6933
FAX: (954) 831-6936

R

**IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA**

CASE NO.: 98-5739CF10A

JUDGE ALFRED J. HOROWITZ (FP)

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

FELONY
2008 OCT 13 PM 3:19
17TH JUDICIAL CIRCUIT
CLERK, BROWARD COUNTY, FL.

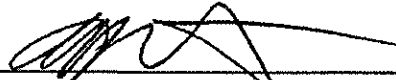
**ORDER DENYING STATE'S MOTION IN LIMINE TO DETERMINE
IF COURT WILL ENTERTAIN A STATEMENT AT SENTENCING**

THIS CAUSE having come on to be heard on State's Motion
**In Limine To Determine If Court Will Entertain A Statement At
Sentencing** and the Court having reviewed the Memorandum of Law,
and being otherwise advised in the Premises, it is hereupon,

ORDERED AND ADJUDGED that said motion be, and the same

is hereby DENIED.

**DONE AND ORDERED in Chambers, at Fort Lauderdale,
Broward County, Florida, this 12 day of October, 2000.**



Judge Alfred J. Horowitz

**cc: Dennis Siegel, Esquire
Tyrone Terell, Esquire**

OCT-23-00 02:45 PM RICHARD C GERACI

954 524 0405

P. 01

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: 98-5719 CF-10A

Plaintiff,

JUDGE: HOROWITZ

vs

ERNESTO BEHRENS,

Defendant

JOINT STIPULATION FOR SUBSTITUTION OF COUNSEL

Undersigned counsel, JAMES S. LEWIS, ESQ., and ANDREA SHELOWITZ, ESQ., and TYRONE A. TERRELL, ESQ. hereby stipulate and agree that JAMES S. LEWIS, ESQ., shall be substituted as attorney of record in the above-styled cause.


All future correspondence and pleadings shall be sent to JAMES S. LEWIS, ESQ., Suite 100, 500 Southeast 6th Street, Fort Lauderdale, Florida 33301.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by U.S. Mail/Hand delivery to the OFFICE OF THE STATE ATTORNEY, 201 Southeast 6th Street, Fort Lauderdale, Florida 33301 this 24th day of October, 2000.


JAMES S. LEWIS, ESQ.
Suite 100
500 Southeast 6th Street
Fort Lauderdale, FL 33301
Telephone (954) 489-2204

ANDREA SHELOWITZ, ESQ.
1895 West Commercial Blvd., Suite 135
Fort Lauderdale, FL 33309
Telephone (954) 489-2204

By: 
JAMES S. LEWIS, ESQ.
Florida Bar No. 318957

By: 
ANDREA SHELOWITZ, ESQ.
Florida Bar No. 92622

TYRONE A. TERRELL, ESQ.
1895 West Commercial Blvd., Suite 135
Fort Lauderdale, FL 33309
Telephone: (954) 489-2204

By: 
TYRONE A. TERRELL, ESQ.
Florida Bar No. 0077976

IN THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT, IN AND FOR BROWARD
COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: 98-5739CF10A

JUDGE: Horowitz

vs.

Ernesto Behrens

FILE ONLY - NOT FOR PROCESSING
AS PER COURT ADMINISTRATION

**ORDER FOR REIMBURSEMENT WHERE DEFENDANT HAS BEEN DECLARED
INDIGENT FOR COSTS**

THIS CAUSE having come on for consideration by the Court upon the submission of an original sworn Motion for Order for Costs by Tyrone Terrell, Esq., Attorney for Defendant, pursuant to the Order Declaring Defendant Indigent for costs entered herein on MAR. 13, 2000, and the Court having reviewed the Motion for Order for Costs and finding that the costs set forth therein comply with the provisions of the aforesaid Order Declaring Defendant Indigent for Costs, it is, therefore

ORDERED AND ADJUDGED that the Broward County Board of County Commissioners shall pay to Tyrone Terrell, P.A., Esq., the total sum of \$ ~~1,662.53~~ 1260.63, as reimbursement for allowable costs expended in the above-captioned cause. A copy of the Order Declaring Defendant Indigent for Costs, and copy of Judgment/Lien for Attorney's Fees and Costs are attached hereto and made a part hereof.

DONE AND ORDERED in Chambers, at the Broward County Courthouse, Fort Lauderdale, Florida on this 24 day of October, 2000.

CIRCUIT/COUNTY JUDGE

Tyrone Terrell

Attorney for Defendant

1895 W. Commercial Blvd Ste. 135

Ft. Lauderdale, FL 33309

Address

65-0937535

Social Security/Tax ID #

APPROVED FOR PAYMENT
AMOUNTS CHARGED TO INDEX SUB
0010-029-232 D-3303 1260-63

PER: MM DATE: 10/17/00

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 98-5739CF10A
JUDGE RONALD J. ROTHSCHILD

STATE OF FLORIDA,

OCT 26 AM 11:24
Plaintiff,

vs.

CLERK, CIRCUIT COURT
BROWARD COUNTY, FL.

ORDER FIXING COMPENSATION
OF EXPERT WITNESS

ERNESTO BEHRENS,

Defendant

FILE ONLY - NOT FOR PROCESSING
AS PER COURT ADMINISTRATION

THIS CAUSE having come on for consideration by the Court upon the submission, by and through the State Attorney, Seventeenth Judicial Circuit of Florida, as Prosecuting Attorney for the Circuit and County Courts of Broward County, of an invoice for the compensation of the expert witness named hereinbelow, who served and/or testified as indicated in the above-captioned cause, and

IT APPEARING to the Court, having examined the invoice of the said expert witness, that the expert witness served as such for the period of time indicated herein during proceedings in the instant case, and the Court being otherwise fully advised in the premises, it is, therefore,

ORDERED and ADJUDGED that the Board of County Commissioners, Broward County, Florida, shall pay the expert witness fees and costs described hereinbelow, as compensation for services rendered in the above-captioned case, as indicated.

Payment shall be made to:

MARTIN TRACEY, Ph.D. Federal ID#019-32-0771
4211 S.W. 109 COURT
MIAMI, FLORIDA 33165-4736

Services:

Testimony at Trial

Service Date(s), total time:

3.50 hours on 9/12/00 & 6.75 hours on 9/13/00

Other costs included:

None

Attachment(s):

Original Invoice dated 9/18/00

Adjusted to Guidelines:

No

Total Due: \$1100.00

DONE and ORDERED in chambers, Broward County Courthouse, Fort Lauderdale, Florida, this 16th day of October, A.D. 2000.


HONORABLE RONALD J. ROTHSCHILD
Judge of the Circuit Court

Copies furnished:

Dennis Siegel, Ass't State Attorney
Suite 568, Broward County Courthouse

Tyrone Terrell, Esq.
Attorney for Defendant

Verified Copy: Accounting Division

Courtesy Copy: Expert Witness

APPROVED FOR PAYMENT

AMOUNTS CHARGED TO INDEX-SUB

0010-029-2312-4920 \$1100.00

PER: Am DATE: 10/12/00

COURT ADMINISTRATOR'S OFFICE 232

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

11-3
Detected

CASE NO.: 98-5739 CF10A

JUDGE: HOROWITZ

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

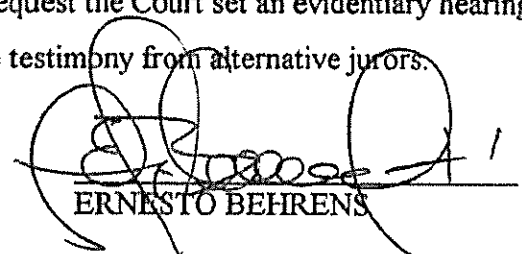
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OCT 27 PM 2:21
CLERK OF COURT
BROWARD COUNTY, FL.

**MOTION FOR JURY INTERVIEWS AND AFFIDAVIT IN SUPPORT THEREOF
AND MOTION FOR EVIDENTIARY HEARING ON JURY MISCONDUCT**

The Defendant, ERNESTO BEHRENS, by and through his undersigned counsel requests this Honorable Court to grant jury interviews prior to and in support of his motion for a new trial in the above-styled cause.

The undersigned Defendant certifies that he believes that jury misconduct occurred during deliberations by one or more jurors by contact with alternate jurors and [REDACTED], an alleged victim of sexual battery in which the Defendant was previously tried and found not guilty.

WHEREFORE, the Defendant would request the Court set an evidentiary hearing in which to conduct jury interviews from [REDACTED] and take testimony from alternative jurors.


ERNESTO BEHRENS

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 27th day of October, 2000 by ERNESTO BEHRENS, who was identified by jail identification.


NOTARY PUBLIC

My commission expires:



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded by U.S. Mail/Hand delivery to DENNIS SEIGEL, ESQ., OFFICE OF THE STATE ATTORNEY, 201 SE 6th Street, Fort Lauderdale, Florida 33301 this 27 day of October, 2000.

JAMES S. LEWIS, ESQ.
Attorney for Defendant
Suite 100
500 SE 6th Street
Fort Lauderdale, FL 33301
Telephone: (954) 523-7949

By: _____

JAMES S. LEWIS, ESQ.
Florida Bar No.: 318957

<input checked="" type="checkbox"/> 17th Judicial Circuit in and for Broward County <input type="checkbox"/> In the County Court in and for Broward County		CLOCK IN
DIVISION: <input checked="" type="checkbox"/> CRIMINAL <input type="checkbox"/> TRAFFIC <input type="checkbox"/> OTHER	HEARING PROCEEDING	
THE STATE OF FLORIDA VS. <u>Ernesto Behrens</u>		CASE NUMBER <u>98 5739 QF10A</u>
PLAINTIFF	DEFENDANT	
CHARGE/S <u>J-II Armed Sexual Battery</u>		
DATE <u>NOV 02 2000</u> // <u>NOV 18 2000</u>		
This case being called for hearing on <u>Evidentiary 3.850</u> , the Defendant was/was not present in open Court <u>with</u> without counsel <u>James Lewis</u> , Esq. The State represented by <u>Dennis Segal</u> , Esq., Assistant State Attorney. Court Reporter, <u>Carmen Jasik / E. Rodriguez</u> was also present.		
The following witnesses were duly sworn and testified in this cause:		
PROSECUTION		DEFENSE
<u>Terry Trout</u>		<div style="background-color: black; width: 100px; height: 20px; margin: 0 auto;"></div>
<u>Joan Trehy</u>		<u>Paula Turgeon</u>
<u>Marta Little</u>		<u>Rubama Turgeon</u>
		<u>Ernesto Behrens</u>
		<u>Henry Lawrence</u>
		<div style="background-color: black; width: 100px; height: 20px; margin: 0 auto;"></div>
After due consideration, this court GRANTED the Motion/s to _____		
DENIED the Motion/s to <u>Devised as to Juror Misconduct</u>		
By: <u>Karen Wayne</u> Deputy Clerk		235

EXHIBIT LIST

CHARGES: 111 Armed Sex Bx

DIV. FP

INCIDENT NUMBER: B5 98 6793

CLERK Kittaynie JUDGE A. Horowitz

VERDICT: Life

TYPE OF CASE/HEARING 3.850 mot & Sentence DATE 19/13/00

**SENTENCE -
DISPOSITION**

STATE / PLTF ATTORNEY D. Segal PHONE NO.

DEFENSE ATTORNEY J. L. W. B. PHONE NO.

INVENTORY LOCATION:

Filed in Open Court,
CLERK OF THE CIRCUIT COURT
ON NOV 13 2000
BY H. A. [Signature]

JUDGE

CLERK

COURT
CLERK

EVIDENCE
CLERK

PAGE 1 OF 1

236

EST _____
VAC _____

DATE 11/13/00 CASE NO. 98 5739 CF 10A ARREST NO. B598 6793 FOR/ON SURETY TC
AND/OR THE SUSPENSION OF YOUR DRIVER'S LICENSE AND DELINQUENCY FEES IMPOSED. SUMMONS/CASH BOND

DATE 11/3/00 CASE NO. 78-2-1096-12A ARREST NO. 133 18 10793 1/C 1/C
NON-RESIDENT SUMMONS/CASH BOND _____ AGENCY _____

DEFENDANT
Crenshaw
AKA
AKA

1

☐ TRIAL
☒ JURY
☐ COURT
☐ 1ST V.O.
☐ FINAL V.O.

☐ CHANGE OF PLEA
☐ PLED GUILTY
☐ PLED NOLO

☐ MAGISTRATE
☐ ARRAIGNMENT
☒ SENTENCING
☐ PSI
☐ PDR

☐ TRUST FUND / HOURS COMM. SER.
TRUST FUND _____ HOURS COMM. SER. _____
VC _____ VC EACH COUNT _____

☐ ACQUITTAL
☐ DISMISSED
☐ PUBLIC DEFENDER ASSESSMENT

☐ NOLLE PROSEQUI
☐ PUBLIC DEFENDER FEE

☐ ADJ. GUILTY \$0.00 VC 5.00
☐ WITHHELD _____ VC EACH COUNT 50.00 SN 1

☐ PUBLIC DEFENDER ASSESSMENT

COUNT

1

FINE CC 5% VC

CJC	EMTF	CDC	SN1

DUI SCHOOL _____ EVALUATION _____

LICENSE SUSP. _____

DAYS IMMOBILIZATION _____

WORK PERMIT _____

COMMUNITY SERVICE HOURS

SENTENCE: 7-11 Life in Prison both counts concurrent with no Parole/Ed with credit
957 day Times and NO contact w victim in this case!

Defendant Declared a Sexual Predator.

P.D. appointed for appeals purposes

COUNT(S)		TIME SERVED			DAYS		
	\$	FINE	COURT COST	5%	V.C.	C.J.C.	SN
	\$	FINE	COURT COST	5%	V.C.	C.J.C.	SN
22	\$	FINE	COURT COST	5%	V.C.	C.J.C.	
23	\$	FINE	COURT COST	5%	V.C.	C.J.C.	
24	\$	FINE	COURT COST	5%	V.C.	C.J.C.	
		DEFERRAL FEE TO:					
		PLUS \$					

Alfred Horowitz

DISP 4 5/97 JUDGE

DIVISION:
CRIMINALDIVISION: FP.

Judgement

THE STATE OF FLORIDA VS.

CASE NUMBER

DEFENDANT

Ernesto Behrens 98 5739

CF/10/17

☐ Probation Violator

State Attorney

Dennis Segal

Court Reporter

Erlinda Rodriguez

The Defendant, Ernesto Behrens being personally before this Court represented by
JAMES LEWIS, his attorney of record, and having:

(Check applicable provision)

- ☒ Been tried and found guilty of the following crime(s)
☐ Entered a plea of guilty to the following crime(s)
☐ Entered a plea of nolo contendere to the following crime(s)

COUNT

CRIME

OFFENSE STATUTE
NUMBER(S)DEGREE OF
CRIMEADD'L MONIES
IMPOSED

<u>I</u>	<u>Armed Sexual Battery</u>	<u>794.013</u>	<u>Life</u>	
<u>II</u>	<u>Burglary with Battery</u>	<u>810.022</u>	<u>1F</u>	

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby
 ADJUDICATED GUILTY of the above crime(s).

The Defendant is hereby ordered to pay the sum of Fifty Dollars (\$50.00) pursuant to F.S. 960.20 (Crimes Comp. Trust Fund).
 The Defendant is further ordered to pay the sum of Five Dollars (\$5.00) as court costs pursuant to F.S. 943.25(4).
 Fines imposed as part of a sentence pursuant to F.S. 777.083 are to be recorded on the Sentence page(s).

(Check if applicable)

Stayed & Withheld () The court hereby stays and withholds the imposition of sentence as to count(s) _____
 Imposition of Sentence and places the Defendant on probation for a period of _____ under the
 supervision of the Department of Corrections (conditions of probation set forth in a separate order)

Sentence Deferred () The Court hereby defers imposition of sentence until _____
 Until Later Date (Date)

☒ Pay \$200.00 Trust Fund pursuant to F.S. 27.3455

Count(s) _____ : _____ DAYS/MONTHS BROWARD COUNTY JAIL W/CREDIT _____ DAYS TIME
 SERVED.

The Defendant in open court was advised of his right to appeal from this Judgement by filing notice of appeal with the Clerk of Court within thirty days following the date
 sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at
 the expense of the State upon showing indigence.

[Signature]
 JUDGE

I hereby certify that a true and correct copy of the above and foregoing was served on the State Attorney by: ☒ hand delivery ☒ U.S. mail and to the
 Defense Attorney by: () hand delivery ☒ U.S. mail this 13 day of NOV, 2000

Karen Haysie
 Deputy Clerk

238

17 th Judicial Circuit in and for Broward County
Criminal Division

UNIFORM COMMITMENT TO CUSTODY OF
DEPARTMENT OF CORRECTIONS

The Circuit Court of BROWARD County in the ~~Summer~~^{FALL} Term, 2000 in the case of
STATE OF FLORIDA

VS.

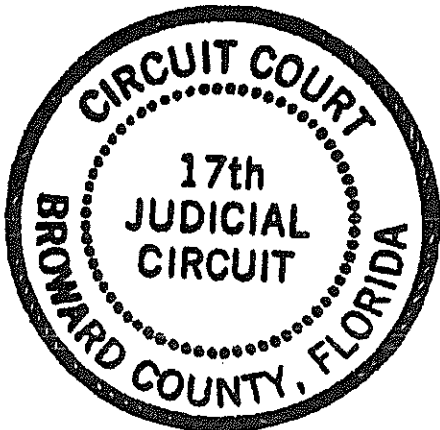
Ernesto Behrens
(DEFENDANT)

98 5739 CF10A
(CASE NUMBER)

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, TO THE SHERIFF OF
SAID COUNTY AND THE DEPARTMENT OF CORRECTIONS OF SAID STATE, GREETINGS:

The above named defendant having been duly charged with the offense specified herein in the above styled Court, and having been duly convicted and adjudged guilty of and sentenced for said offense by said Court, as appears from the attached certified copies of indictment/information, Judgment and Sentence, and Felony Disposition and Sentence Data form which are hereby made parts hereof;

Now therefore, this is to command you, the said Sheriff, to take and keep and, within a reasonable time after receiving this commitment, safely deliver the said defendant, together with any pertinent investigation Report prepared in this case, into the custody of the Department of Corrections of the State of Florida; and this is to command you, the said Department of Corrections, by and through your Secretary, Regional Directors, Superintendents, and other officials, to keep and safely imprison the said defendant for the term of said sentence in the institution in the state correction system to which you, the said Department of Corrections, may cause the said defendant to be conveyed to thereafter transferred. And these presents shall be your authority for the same. Herein fail not.



WITNESS the Honorable ALFRED J. HOROWITZ
Judge of said Court, as also

ED KENNEDY, Clerk, and the
Seal thereof, this day of NOV 13 2000,
ED KENNEDY, Clerk

BY Karen Wayne
Deputy Clerk

17th Judicial Circuit in and for Broward County		CLOCK IN
DIVISION: Criminal FP	SENTENCE as to Count <u>I</u>	
THE STATE OF FLORIDA VS. Ernesto Behrens DEFENDANT		CASE NUMBER 98 5739 CF10

The Defendant, being personally before this court, accompanied by his attorney, James Lewis and having been adjudicated guilty herein, and the court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he sentenced as provided by law, and cause shown,

- ☒ and the Court having on 9/14/00 deferred imposition of sentence until this date.
☐ and the Court having previously entered a judgment in this case on the defendant now resents the defendant.
☐ and the Court having placed the Defendant on Probation/Community Control and having subsequently revoked the Defendant's Probation/Community Control.

IT IS THE SENTENCE OF THE COURT that:

The Defendant pay a fine of \$_____, pursuant to F. S. 775.063, plus \$_____ at the 5% surcharge required by F. S. 960.25.

- ☒ The Defendant is hereby committed to the custody of the Department of Corrections.
☐ The Defendant is hereby committed to the custody of the Sheriff of Broward County, Florida.
☐ The Defendant is hereby sentenced as a youthful offender in accordance with F. S. 958.04.

TO BE IMPRISONED (check one: unmarked sections are inapplicable)

- ☒ For a term of Natural Life.
☐ For a term of _____.
☐ Said SENTENCE IS SUSPENDED for a period of _____ subject to conditions set forth in this Order.

If "split" sentence, complete either paragraph.

- ☐ Followed by a period of _____ on Probation/Community Control under the supervision of the Department of Correction according to the terms and conditions of supervision set forth in separate order entered herein.

- ☐ However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the defendant shall be placed on Probation/Community Control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control set forth in a separate order entered herein.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by: ☒ Hand delivery
☐ U.S. Mail and to the Defense Attorney by: ☒ Hand delivery ☐ U.S. Mail this 13 day of NOV, 2000

DIVISION: CRIMINAL <u>FP</u>	SENTENCE (AS TO COUNT <u>1</u>)	CASE NUMBER <u>98 5739 CF10A</u>
------------------------------------	--------------------------------------	-------------------------------------

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS
(As to Count 1)

By appropriate notation, the following provisions apply to the sentence imposed:

MANDATORY/MINIMUM PROVISIONS:

- | | | |
|---|--------------------------|---|
| FIREARM | <input type="checkbox"/> | It is further ordered that the three year minimum imprisonment provision of Florida Statute 775.087(2) are hereby imposed for the sentence specified in this count. |
| DRUG TRAFFICKING | <input type="checkbox"/> | It is further ordered that the _____ mandatory minimum imprisonment provisions of Florida Statute 893.135(1) are hereby imposed for the sentence specified in this court. |
| CONTROLLED
SUBSTANCE WITHIN
1000 FEET OF SCHOOL | <input type="checkbox"/> | It is further ordered that the three year minimum imprisonment provision of Florida Statute 893.13(1)(c) 1, are hereby imposed for the sentence specified in this court. |
| HABITUAL FELONY
OFFENDER | <input type="checkbox"/> | The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in this sentence in accordance to the provisions of Florida Statute 775.084(4). The requisite findings by the court are set forth in a separate order or stated on the record in open court. |
| HABITUAL VIOLENT
OFFENDER | <input type="checkbox"/> | The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in this sentence in accordance with the provision of Florida Statute 775.084(4). A minimum term of _____ year(s) must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court. |
| LAW ENFORCEMENT
PROTECTION ACT | <input type="checkbox"/> | It is further ordered that the Defendant shall serve a minimum of _____ years before release in accordance with Florida Statute 775.0823. |
| CAPITOL OFFENSE | <input type="checkbox"/> | It is further ordered that the Defendant shall serve no less than 25 years in accordance with the provisions of Florida Statute 775.082(1). |
| VIOLENT CAREER
CRIMINAL | <input type="checkbox"/> | The defendant is adjudicated a violent career criminal offender and has been sentenced to an term in accordance with the provision of Florida Statute 775.084(4)(c). A minimum term of _____ year(s) must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court. |
| PRISON RELEASEE
REOFFENDER | <input type="checkbox"/> | The defendant is sentenced as a prison releasee reoffender and must serve a term of imprisonment of _____ years in accordance with the provisions of Florida Statute 775.082(8)(a)2. |

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by: ☒ Hand delivery
[] U.S. Mail and to the Defense Attorney by: ☒ Hand delivery [] U.S. Mail this 13 day of NOV, 2000.

DIVISION: CRIMINAL FP	SENTENCE (AS TO COUNT <u>I</u>)	CASE NUMBER 98 5731 CF 1014
---	--	---

OTHER PROVISIONS

**FIREARM/DESTRUCTIVE
DEVICE**

☐ It is further ordered that the _____ year mandatory minimum imprisonment provision of Florida Statute 775.087(2) and (3) is hereby imposed for the sentence in this court.

**THREE-TIME VIOLENT
FELONY OFFENDER**

☐ The Defendant is adjudicated a three-time violent felony offender and has been sentenced to an extended term in accordance with the provisions of Florida Statute 775.084. The requisite findings by the court are set forth in a separate order or as stated on the record in open court.

**SHORT-BARRELED RIFLE,
SHOTGUN, MACHINE GUN**

☐ It is further ordered that the five-year minimum provisions of Florida Statute 790.221(2) are hereby imposed for the sentence specified in this court.

**CONTINUING CRIMINAL
ENTERPRISE**

☐ It is further ordered that the 25 year mandatory minimum sentence provisions of Florida Statute 893.20 are hereby imposed for the sentence specified in this court.

**RETENTION OF
JURISDICTION**

☐ The court retains jurisdiction over the defendant pursuant to Florida Statutes 947.18(3).

JAIL CREDIT

☒ It is further ordered that the defendant shall be allowed a total of 937 days as credit for time incarcerated prior to imposition of this sentence.

PRISON CREDIT

☐ It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

**CONSECUTIVE/
CONCURRENT AS
TO OTHER COUNTS**

☐ It is further ordered that the sentence imposed by this court shall run _____ consecutive to _____ concurrent with (check one) the sentence set forth in count _____ of this case.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by: ☒ Hand delivery ☐ U.S. Mail and to the Defense Attorney by: ☒ Hand ☐ U.S. Mail this 13 day of NOV 20 00.

17th Judicial Circuit in and for Broward County		CLOCK IN
DIVISION: Criminal <i>FP</i>	SENTENCE as to Count <u>II</u>	
THE STATE OF FLORIDA VS. <i>Ernesto Behrens</i> DEFENDANT		CASE NUMBER <i>98 5739 CF101</i>

The Defendant, being personally before this court, accompanied by his attorney, James Lewis and having been adjudicated guilty herein, and the court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he sentenced as provided by law, and cause shown,

- ☒ and the Court having on 9/14/00 deferred imposition of sentence until this date.
☐ and the Court having previously entered a judgment in this case on the defendant now resentsences the defendant.
☐ and the Court having placed the Defendant on Probation/Community Control and having subsequently revoked the Defendant's Probation/Community Control.

IT IS THE SENTENCE OF THE COURT that:

The Defendant pay a fine of \$ _____, pursuant to F. S. 775.063, plus \$ _____ at the 5% surcharge required by F. S. 960.25.

- ☒ The Defendant is hereby committed to the custody of the Department of Corrections.
☐ The Defendant is hereby committed to the custody of the Sheriff of Broward County, Florida.
☐ The Defendant is hereby sentenced as a youthful offender in accordance with F. S. 958.04.

TO BE IMPRISONED (check one: unmarked sections are inapplicable)

- ☒ For a term of Natural Life.
☐ For a term of _____.
☐ Said SENTENCE IS SUSPENDED for a period of _____ subject to conditions set forth in this Order.

If "split" sentence, complete either paragraph.

- ☐ Followed by a period of _____ on Probation/Community Control under the supervision of the Department of Correction according to the terms and conditions of supervision set forth in separate order entered herein.

- ☐ However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the defendant shall be placed on Probation/Community Control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control set forth in a separate order entered herein.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by: ☒ Hand delivery ☐ U.S. Mail and to the Defense Attorney by: ☒ Hand delivery ☐ U.S. Mail this 13 day of NOV, 2000

DIVISION:
CRIMINAL

FP

SENTENCE
(AS TO COUNT 11)

CASE NUMBER

98 5739 CF10

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS
(As to Count 11)

By appropriate notation, the following provisions apply to the sentence imposed:

MANDATORY/MINIMUM PROVISIONS:

FIREARM

☐

It is further ordered that the three year minimum imprisonment provision of Florida Statute 775.087(2) are hereby imposed for the sentence specified in this count.

DRUG TRAFFICKING

☐

It is further ordered that the _____ mandatory minimum imprisonment provisions of Florida Statute 893.135(1) are hereby imposed for the sentence specified in this court.

CONTROLLED
SUBSTANCE WITHIN
1000 FEET OF SCHOOL

☐

It is further ordered that the three year minimum imprisonment provision of Florida Statute 893.13(1)(e) 1, are hereby imposed for the sentence specified in this court.

HABITUAL FELONY
OFFENDER

☐

The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in this sentence in accordance to the provisions of Florida Statute 775.084(4). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

HABITUAL VIOLENT
OFFENDER

☐

The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in this sentence in accordance with the provision of Florida Statute 775.084(4). A minimum term of _____ year(s) must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

LAW ENFORCEMENT
PROTECTION ACT

☐

It is further ordered that the Defendant shall serve a minimum of _____ years before release in accordance with Florida Statute 775.0823.

CAPITOL OFFENSE

☐

It is further ordered that the Defendant shall serve no less than 25 years in accordance with the provisions of Florida Statute 775.082(1).

VIOLENT CAREER
CRIMINAL

☐

The defendant is adjudicated a violent career criminal offender and has been sentenced to an term in accordance with the provision of Florida Statute 775.084(4)(c). A minimum term of _____ year(s) must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

PRISON RELEASEE
REOFFENDER

☐

The defendant is sentenced as a prison releasee reoffender and must serve a term of imprisonment of _____ years in accordance with the provisions of Florida Statute 775.082(8)(a)2.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by: ☒ Hand delivery
[] U.S. Mail and to the Defense Attorney by: ☒ Hand delivery [] U.S. Mail this 13 day of APR, 20 20.

DIVISION:
CRIMINAL

FP

SENTENCE
(AS TO COUNT I)

CASE NUMBER

98 5739

CF/0

OTHER PROVISIONS

- FIREARM/DESTRUCTIVE DEVICE ☐ It is further ordered that the _____ year mandatory minimum imprisonment provision of Florida Statute 775.087(2) and (3) is hereby imposed for the sentence specified in this count.
- THREE-TIME VIOLENT FELONY OFFENDER ☐ The Defendant is adjudicated a three-time violent felony offender and has been sentenced to an extended term in accordance with the provisions of Florida Statute 775.084. The requisite finding by the court are set forth in a separate order or as stated on the record in open court.
- SHORT-BARRELED RIFLE, SHOTGUN, MACHINE GUN ☐ It is further ordered that the five-year minimum provisions of Florida Statute 790.221(2) are hereby imposed for the sentence specified in this count.
- CONTINUING CRIMINAL ENTERPRISE ☐ It is further ordered that the 25 year mandatory minimum sentence provisions of Florida Statute 893.20 are hereby imposed for the sentence specified in this count.
- RETENTION OF JURISDICTION ☐ The court retains jurisdiction over the defendant pursuant to Florida Statutes 947.16 (3).
- JAIL CREDIT ☒ It is further ordered that the defendant shall be allowed a total of 957 days as credit for time incarcerated prior to imposition of this sentence.
- PRISON CREDIT ☐ It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to re-sentencing.
- CONSECUTIVE CONCURRENT AS TO OTHER COUNTS ☒ It is further ordered that the sentence imposed by this court shall run _____ consecutive to ☒ concurrent with (check one) the sentence set forth in count I of this case.
- CONSECUTIVE CONCURRENT AS TO OTHER CONVICTIONS ☐ It is further ordered that the composite term of all sentences imposed for the courts specified in this order shall run _____ consecutive to _____ concurrent with (check one) the following:
_____ Any active sentence being served.
_____ Specific sentences: _____

PSI ORDERED

YES ☐ NO ☐

In the event the above sentence is to the Department of Corrections, the Sheriff of Broward County, Florida, is hereby ordered and directed to deliver the Defendant to the Department of Corrections at the facility designated by the Department together with a copy of this Judgment and Sentence and any other documents specified by Florida Statutes.

The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to assistance of counsel in taking said appeal at the expense of the State upon showing of indigence.

In imposing the above sentence, the Court further recommends _____

DONE AND ORDERED in Open Court at Broward County, Florida, this 13 day of NOV, 2000


JUDGE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by: ☐ Hand delivery
☐ U.S. Mail and to the Defense Attorney by: ☐ Hand delivery ☐ U.S. Mail this 13 day of NOV, 2000

246

RULE 3.996

SENTENCING GUIDELINES S

ESHEET

1. DATE OF SENTENCE 11 12 00 M O D Y Y R		2. PREPARED BY <input type="checkbox"/> DC <input checked="" type="checkbox"/> SAO		3. COUNTY Broward		4. SENTENCING JUDGE Horowitz	
5. NAME (LAST, FIRST, M.I.) Behrens, Ernesto		6. DOB 11 10 64 M O D Y Y R		7. DC# [] [] [] [] [] []		9. RACE <input type="checkbox"/> B <input checked="" type="checkbox"/> W <input type="checkbox"/> OTH	
				8. OBTS# [] [] [] [] [] [] [] [] [] []		10. GENDER <input checked="" type="checkbox"/> M <input type="checkbox"/> F	
				HISP. <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		11. PLEA <input type="checkbox"/> PLEA <input checked="" type="checkbox"/> TRIAL	

☐ Check here if this sentencing is for only a revocation of probation or community control.

I. PRIMARY OFFENSE: If Qualifier, please check A S C (A = Attempt, S = Solicitation, C = Conspiracy) **POINTS**

DOCKET# 98-5739 CF10A FELONY DEGREE L F.S.# 794.011(3) OFFENSE LEVEL 10 OFF. DATE 05 12 98
M O D Y Y R

Description: Sexual Battery - Armed

(Level = Pts: 1 = 4, 2 = 10, 3 = 16, 4 = 22, 5 = 28, 6 = 36, 7 = 42, 8 = 74, 9 = 91, 10 = 116)

I. 116

II. ADDITIONAL OFFENSE(S): Supplemental page attached ☐

DOCKET# 98-5739 CF10A FEL/MM Fel F.S.# 810.02(2) OFFENSE LEVEL 8 QUALIFY CNTS 1 POINTS 9.6
A S C

Description: Burglary With A Battery

Filed 11 13 2000 Court,
CLERK OF THE CIRCUIT COURT

Description: ON JULY 13 2000

By [Signature]

Description: (Level = Pts: M = 0.2, 1 = 0.7, 2 = 1.2, 3 = 2.4, 4 = 3.6, 5 = 5.4, 6 = 7.2, 7 = 8.4, 8 = 9.6, 9 = 10.8, 10 = 12.0)

Supplemental page points

II. 9.6

III. VICTIM INJURY:

	Number	Total		Number	Total
2ND Degree Murder	120 X <u> </u>	= <u> </u>	Slight	4 X <u> </u>	= <u> </u>
Death	60 X <u> </u>	= <u> </u>	Sex Penetration	40 X <u>1</u>	= <u>40</u>
Severe	40 X <u> </u>	= <u> </u>	Sex Contact	18 X <u> </u>	= <u> </u>
Moderate	18 X <u> </u>	= <u> </u>			

III. 40

IV. PRIOR RECORD: Supplemental page attached ☐

FEL/MM DEGREE	F.S. #	OFFENSE LEVEL	QUALIFY: A S C	DESCRIPTION	NUM	POINT(S)
Fel-1 pbl	810.02	8	<u> </u> <u> </u> <u> </u>	Armed Burglary	2	x 6.4 = 12.8
Fel-3	810.06	4	<u> </u> <u> </u> <u> </u>	Possession Of Burglary Tools	2	x 2.4 = 2.4
Fel-3	812.014(1)(a)	2	<u> </u> <u> </u> <u> </u>	Grand Theft	2	x 0.8 = 1.6
			<u> </u> <u> </u> <u> </u>		x	=
			<u> </u> <u> </u> <u> </u>		x	=

(Level = Pts: M = 0.2, 1 = 0.5, 2 = 0.8, 3 = 1.6, 4 = 2.4, 5 = 3.6, 6 = 4.8, 7 = 5.6, 8 = 6.4, 9 = 7.2, 10 = 8.0)

Supplemental page points

IV. 16.8

Page Subtotal 182.4

DISTRIBUTION:

White (Original) / Clerk
Green / DC Data
Canary / State Attorney

Pink / Defense Attorney
Goldenrod / DC Offender File

Effective Date: January 1, 1994

age 1 Subtotal

182.4

V.

0

VI.

0

VII.

0

VIII.

0

Subtotal Sentence Points.

182.4

V. Legal Status Violation = 4 Points

VI. Release Program Violation - 6 Points X Number of Violations (Max 18Pts) =

VII. Firearm or Destructive Device = 18 Points

VIII. Semi-Automatic Weapon or Machine Gun = 25 Points

IX. Enhancements (only one multiplier may be used)

Law Enforcement Protection

☐ 1.5 Multiplier ☐ 2.0 Multiplier

Drug Trafficking

1.5 Multiplier

Enhanced Subtotal Sentence Points IX.

182.4

TOTAL SENTENCE POINTS

182.4

SENTENCE COMPUTATION

- If total sentence points are less than, or equal to 40, the sentencing court may not impose a state prison sentence. The sentencing court may increase total sentence points that are less than or equal to 40 by up to 15 percent and may impose a state prison sentence if the increased total exceeds 40 points.

$$\text{Total Sentence Points} \times 1.15 = \text{Increased Sentence Points}$$

- If total sentence points are greater than 40 and less than or equal to 52 the decision to incarcerate in a state prison is left to the discretion of the court. If total sentence points are greater than 52 the sentence must be a state prison sentence.
- A state prison sentence is calculated by deducting 28 from total or increased sentence points.

182.4 minus 28 = 154.4
Total Or Increased Sentence Pts. State Prison Months

- The sentencing court may increase or decrease state prison months by up to 25 percent except where the total sentence points were less than or equal to 40 but have been increased by up to 15 percent to exceed 40 points. Any state prison sentence must exceed 12 months.

<u>154.4</u>	$\begin{matrix} & \diagup & \\ & \cdot & \\ & \diagdown & \end{matrix}$	<u>151.8</u>
State Prison Months		Minimum State Prison Months
		<u>193</u>
		Maximum State Prison Months

TOTAL SENTENCE IMPOSED

State Prison

County Jail

Community Control

Probation

Years

Life

Months

Days

- * Please designate the particular type of sentence where an enhanced or mandatory sentence imposed.
- | | |
|---|--|
| <input type="checkbox"/> Habitual Felony Offender | <input type="checkbox"/> Guidelines Aggravated Departure |
| <input type="checkbox"/> Habitual Violent Felony Offender | <input type="checkbox"/> Guidelines Mitigated Departure |
| Mandatory pursuant to: <input type="checkbox"/> s.775.087 | <input type="checkbox"/> s.893.13 <input type="checkbox"/> s.893.135 |

IN THE COUNTY/CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 98-5739 CF 10 A

JUDGE Horowitz

STATE OF FLORIDA,

Plaintiff,

vs.

Ernesto Behrens

Defendant(s).

JUDGMENT AND
RESTITUTION ORDER
(F.S. 775.089)

THIS CAUSE having come on to be heard on the 13th day of November, A.D. 2000,

upon the State's motion for an Order requiring that the Defendant herein, pursuant to §775.089, Florida Statutes, pay restitution costs for the benefit of the aggrieved party herein:

(Name) Denise Wood Arsenault
(Address) 1521-B N.W. 80th Avenue
(City, State ZIP) Margate, Florida 33063

Filed In Open Court,
CLERK OF THE CIRCUIT COURT

ON NOV 15 2000
BY [Signature]

and the Court being fully advised in the premises, it is thereby

ORDERED AND ADJUDGED as follows:

☒ Restitution is not applicable in this case because the victim suffered no financial loss
for which restitution was requested

☐ The State's Motion is hereby granted and the Defendant shall pay restitution for the benefit of the above-named aggrieved party, in the total sum of _____

(\$ _____)

1. Payment shall be made to ☐ Clerk of Circuit Court (felony)
☐ Clerk of County Court (misdemeanor)
☐ Parole & Probation (State - felony)
☐ County Probation (misdemeanor)

2. Payment Schedule [Check applicable instruction(s)]

Total shall be paid in installment payments of \$ _____, payable during the term of probation on a ☐ weekly ☐ monthly basis.

Judgment and Restitution Order, continued

The Department of Corrections is ordered to collect any monetary payments made directly to the prisoner and any compensation for work performed in community programs and pay the money to the aggrieved party until restitution is paid in full. See §946.002(2)(a)(b)(c), Florida Statutes.

The Department of Corrections or County Probation Officer is ordered to determine if the victim has received an award from the Bureau of Crimes Compensation (Tel: 904/488-0848). If an award has been made to the victim the Department of Corrections or County Probation Officer is ordered to collect from the prisoner and pay to the "CRIMES COMPENSATION TRUST FUND" an amount of money equal to the award. See §§960.17, and, specifically, 960.17(4), Florida Statutes.

The Department of Corrections and Parole & Probation Commission are ordered to make restitution payable to the victim a special condition of any work release or any kind of early release program for the Defendant. See §§947.181, Florida Statutes.

The Court retains jurisdiction to modify restitution in this case.

Other, specified conditions: _____

IT IS FURTHER ORDERED AND ADJUDGED that the Clerk of the Court shall provide to the aggrieved party named herein a certified copy hereof, in order for the aggrieved party to record this judgment as a lien, pursuant to §55.10, Florida Statutes.

DONE AND ORDERED at Fort Lauderdale, Broward County, Florida, this 13th day of November, A.D. 2000.


HONORABLE Alfred Horowitz
Judge of the County/Circuit Court

Copies:

State Attorney	<input type="checkbox"/>
Defense Counsel	<input type="checkbox"/>
Victim	<input type="checkbox"/> (Certified copy)
Probation Officer	<input type="checkbox"/>
Dept. of Corrections	<input type="checkbox"/>

250

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 98-5739CF10A
JUDGE: ALFRED HOROWITZ

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS

Defendant.

Filed in Open Court,
CLERK OF THE CIRCUIT COURT
ON NOV 13 2000
BY *[Signature]*

**ORDER FINDING DEFENDANT TO BE SEXUAL PREDATOR
PURSUANT TO THE FLORIDA SEXUAL PREDATOR ACT AND
FOR SUBMISSION OF BLOOD FOR DNA DATABASE**

THE DEFENDANT, having been convicted of Sexual Battery-Armed which offense occurred on or after October 1, 1993, in violation of Florida Statute 794.011(3), *it is hereby;*

ORDERED AND ADJUDGED that this Court finds the Defendant to be a Sexual Predator pursuant to Florida Statute 775.21, et seq.

The Defendant is further ordered to submit to a blood draw for purposes of DNA database in accordance with Florida Statute 943.325.

DONE AND ORDERED in Fort Lauderdale, Broward County, Florida this 13 day of ~~October~~, 2000.
Nov.

[Signature]
HONORABLE ALFRED HOROWITZ
Judge of the Circuit Court

copies furnished:

DENNIS SIEGEL
Assistant State Attorney
State Attorney's Office

TYRONE A. TERRELL, ESQ.
Attorney for the Defendant

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 98-5739CF10A
JUDGE: ALFRED HOROWITZ

STATE OF FLORIDA,

Plaintiff,

VS.

ERNESTO BEHRENS

Defendant.

Filed in Open Court,
CLERK OF THE CIRCUIT COURT
ON NOV 3 2000
BY [Signature]

**ORDER FINDING DEFENDANT TO BE SEXUAL PREDATOR
PURSUANT TO THE FLORIDA SEXUAL PREDATOR ACT AND
FOR SUBMISSION OF BLOOD FOR DNA DATABASE**

THE DEFENDANT, having been convicted of Sexual Battery-Armed which offense occurred on or after October 1, 1993, in violation of Florida Statute 794.011(3), *it is hereby;*

ORDERED AND ADJUDGED that this Court finds the Defendant to be a Sexual Predator pursuant to Florida Statute 775.21, et seq.

The Defendant is further ordered to submit to a blood draw for purposes of DNA database in accordance with Florida Statute 943.325.

DONE AND ORDERED in Fort Lauderdale, Broward County, Florida this 13 day of ~~October~~ Nov., 2000.

[Signature]
HONORABLE ALFRED HOROWITZ
Judge of the Circuit Court

copies furnished:

DENNIS SIEGEL
Assistant State Attorney
State Attorney's Office

TYRONE A. TERRELL, ESQ.
Attorney for the Defendant

252

☒ 17th Judicial Circuit in and for Broward County
☐ In the County Court in and for Broward County

DIVISION:
☒ Criminal
☐ Traffic
☐ Other

ORDER

Filed In Open Court,
CLERK OF THE CIRCUIT COURT
ON NOV 13 2000
BY R. Wayne

THE STATE OF FLORIDA VS.

Ernesto Behrens

DEFENDANT

CASE NUMBER

98-5739 CF 10 A

CHARGE

The State of Florida's Motion To Impose Sentence Which Is Upward Departure From Recommended Guideline Sentence is granted and the Court will impose an upward departure sentence. The Court finds that the Defendant has been convicted on May 14, 1992, in case number 90-1320 CF 10A of two counts of Armed Burglary, level 8 offenses under the Florida sentencing guidelines, and in this case was convicted of Sexual Battery-Armed, a level 10 offense. Pursuant to F.S. 921.0016(3)(r) (1995), this is a valid ground for an upward departure.

DONE AND ORDERED THIS 13th DAY OF November, 2000, IN

BROWARD COUNTY, FLORIDA.


JUDGE

COPIES: BSO - SAO

253

STATE OF FLORIDA,

vs.

Ernesto Behrens

IN THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT, IN AND FOR BROWARD
COUNTY, FLORIDA

CASE NO.: 98-5739C F10A

JUDGE: Horowitz

FILE ONLY - NOT FOR PROCESSING
AS PER COURT ADMINISTRATION

**ORDER FOR REIMBURSEMENT WHERE DEFENDANT HAS BEEN DECLARED
INDIGENT FOR COSTS**

THIS CAUSE having come on for consideration by the Court upon the submission of an original sworn Motion for Order for Costs by Tyrone A. Terrell, Esq., Attorney for Defendant, pursuant to the Order Declaring Defendant Indigent for costs entered herein on March 13, 2000 and the Court having reviewed the Motion for Order for Costs and finding that the costs set forth therein comply with the provisions of the aforesaid Order Declaring Defendant Indigent for Costs, it is, therefore

ORDERED AND ADJUDGED that the Broward County Board of County Commissioners shall pay to Tyrone Terrell, Esq., the total sum of \$ 717.00, as reimbursement for allowable costs expended in the above-captioned cause. A copy of the Order Declaring Defendant Indigent for Costs, and copy of Judgment/Lien for Attorney's Fees and Costs are attached hereto and made a part hereof.

DONE AND ORDERED in Chambers, at the Broward County Courthouse, Fort Lauderdale, Florida on this _____ day of _____, 19 ____.

CIRCUIT/COUNTY JUDGE

TYRONE TERRELL

Attorney for Defendant

1895 W. COMMERCIAL BLVD., #135

FT. LAUD. FL 33309

Address

65-0937535

Social Security/Tax ID #

APPROVED FOR PAYMENT

AMOUNTS CHARGED TO INDEX SUB

0010-029-232 1-4923 \$ 717.00

PER: DM

DATE: 12/1/00

COURT ADMINISTRATOR'S OFFICE

STATE OF FLORIDA,

vs.

Ernesto Behrens

12-8
FELONY

2000 DEC -6 AM 9:23

IN THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT, IN AND FOR BROWARD
COUNTY, FLORIDA

CASE NO.:

98-5739CF10A

JUDGE:

Horowitz

BROWARD COUNTY COURT
BROWARD COUNTY, FL

FILE ONLY - NOT FOR PROCESSING
AS PER COURT ADMINISTRATION

**ORDER FOR REIMBURSEMENT WHERE DEFENDANT HAS BEEN DECLARED
INDIGENT FOR COSTS**

THIS CAUSE having come on for consideration by the Court upon the submission of an original sworn Motion for Order for Costs by Tyrone A Terrell, Esq., Attorney for Defendant, pursuant to the Order Declaring Defendant Indigent for costs entered herein on March 13, 2000, and the Court having reviewed the Motion for Order for Costs and finding that the costs set forth therein comply with the provisions of the aforesaid Order Declaring Defendant Indigent for Costs, it is, therefore

ORDERED AND ADJUDGED that the Broward County Board of County Commissioners shall pay to Tyrone A. Terrell Esq., the total sum of \$ 401.50, as reimbursement for allowable costs expended in the above-captioned cause. A copy of the Order Declaring Defendant Indigent for Costs, and copy of Judgment/Lien for Attorney's Fees and Costs are attached hereto and made a part hereof.

DONE AND ORDERED in Chambers, at the Broward County Courthouse, Fort Lauderdale, Florida on this _____ day of _____, 19 ____.


CIRCUIT/COUNTY JUDGE

TYRONE TERRELL

Attorney for Defendant

1895 W. COMMERCIAL BLVD., #135

FT. LAUDERDALE, FL 33309

Address

65-0937535

Social Security/Tax ID #

APPROVED FOR PAYMENT

AMOUNTS CHARGED TO INDEX SUB

0010-029-2321-4923 \$401.50

PER: 

DATE: 12/1/00

COURT ADMINISTRATOR'S OFFICE

255

IN THE CIRCUIT COURT THE SEVENTEENTH
JUDICIAL CIRCUIT
BROWARD COUNTY, STATE OF FLORIDA

STATE OF FLORIDA,

CASE NO.: 98-5739CF10A

vs.

JUDGE: HOROWITZ

ERNESTO BEHRENS,

Defendant.

2000 SEP 21 PM 3:12
RECEIVED
LEAH CIRCUIT COURT
BROWARD COUNTY, FL.

MOTION FOR NEW TRIAL

The Defendant, in the above cause, through undersigned counsel, pursuant to F.R.Cr.P. 3.580 through 3.610, moves this Honorable Court to order a new trial, or for such other and further relief as is proper, on the following grounds:

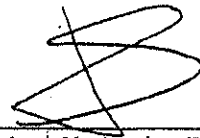
1. The Defendant was tried in this cause beginning on August 9, 2000 and concluding on September 14, 2000, before the Honorable Judge Horowitz.
2. The verdict in this case was contrary to law and the weight of the evidence.
3. The State failed to bring forth competent and un rebutted evidence of Defendant's guilt.
4. State failed to provide any evidence or rebut the testimony of the defense's alibi witness.
5. The Court erred in the decision of matters of law during the course of the trial.
6. The Court erroneously admitted evidence presented by the State, specifically, oral swabs, without proof of chain of custody, despite the probable tampering asserted by the defense.
7. The Court erroneously admitted a hand written list of names produced by the State, for the first time during the trial, thus, prejudicing the defense and violating discovery rules.
8. The Court failed to strike the potential jurors, after defense's objection to an overly prejudicial statement by a juror who was subsequently struck for cause.
9. The Defendant was prejudiced by the way in which the trial was commenced.
10. The Court failed to properly swear to venire panel before voir dire commenced.
11. The Court erroneously permitted the trial for the Defendant to be delayed. The jury in this case was picked on August 10, 2000. The chosen panel, which was not sworn, was then told to return on September 11, 2000 for opening statements. This delay severely prejudiced the Defendant's case.
12. Defendant did not receive a fair trial, as the defense has received information, which may amount to jury tampering.

13. Personal attacks by State Attorney during closing arguments were highly prejudicial, thus denying defendant a fair trial.
14. Other grounds to be argued ORE TENUS.

WHEREFORE, the Defendant respectfully requests this Honorable Court grant this Motion for New Trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered via inter-office mail to the Office of the State Attorney, Dennis Seigel, Esq., Broward County Courthouse, Fort Lauderdale, Florida on: September 21, 2000



Andrea Shelowitz, Esq.
Bar No. 0092622
Shelowitz & Shelowitz, P.A.
1895 West Commercial Blvd. Ste. 135
Ft. Lauderdale, FL 33309
(954) 489-2204

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 98-5739 CF10A

JUDGE: HOROWITZ

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

OCT 27 PM 2:21
17TH JUDICIAL CIRCUIT
BROWARD COUNTY, FL.

DEFENDANT'S AMENDED MOTION FOR NEW TRIAL

The Defendant, ERNESTO BEHRENS, by and through his undersigned counsel, pursuant to Rule 3.580 through 3.610, moves this Honorable Court to order a new trial, on the following grounds:

1. The Defendant was tried in this cause beginning on August 9, 2000 and concluding on September 14, 2000, before the Honorable Alfred J. Horowitz.
2. The verdict in this case was contrary to law and the weight of the evidence.
3. The State failed to bring forth competent and un rebutted evidence of Defendant's guilt.
4. State failed to provide any evidence or rebut the testimony of the defense's alibi witness.
5. The Court erred in the decision of matters of law during the course of the trial.
6. The Court erroneously admitted evidence presented by the State, specifically, oral swabs, and sheets without proof of chain of custody, despite the probable tampering asserted by the defense.
7. The Court erroneously admitted a hand written list of names produced by the State, disclosed for the first time during the trial, thus prejudicing the defense and violating discovery rules.

8. The Court permitted the jury to hear that Ernesto Behrens was on a list of suspects in a Dade County sexual battery and murder case. .
9. The Court failed to strike the potential jurors, after defense's objection to an overly prejudicial statement by a juror who was subsequently struck for cause.
10. The Defendant was prejudiced by the way in which the trial was commenced.
11. The Court failed to properly swear in the venire panel before voir dire commenced.
12. The Court erroneously permitted the trial for the Defendant to be delayed. The jury in this case was picked on August 10, 2000. The chosen panel, which was not sworn, was then told to return on September 11, 2000 for opening statements. This delay severely prejudiced the Defendant's case.
13. The Defendant did not receive a fair trial, as the defense has received information, which may amount to jury misconduct. [REDACTED], an alleged victim of sexual battery in which the Defendant was previously tried and found not guilty, had contact during the trial and jury deliberations with jurors and alternative jurors.
14. Personal attacks by the Assistant State Attorney on Defendant and defense counsel during closing arguments were highly prejudicial, thus denying defendant a fair trial.
15. The Court erred by not allowing the testimony of Paula Turgeon as to the Defendant's place of birth.
16. Other grounds to be argued ORE TENUS.

WHEREFORE, the Defendant respectfully requests this Honorable Court grant this Motion for New Trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded by U.S. Mail/Hand delivery to DENNIS SEIGEL, ESQ., OFFICE OF THE STATE ATTORNEY, 201 SE 6th Street, Fort Lauderdale, Florida 33301 this 27 day of October, 2000.

JAMES S. LEWIS, ESQ.
Attorney for Defendant
Suite 100
500 SE 6th Street
Fort Lauderdale, FL 33301
Telephone: (954) 523-7949

By: _____

JAMES S. LEWIS, ESQ.
Florida Bar No.: 318957

IN THE CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs

ERNESTO BEHRENS,

Defendant.

Case #: 98-5739 CF10A

Judge: HOROWITZ

2000 NOV 28 A
RECEIVED
17TH JUDICIAL CIRCUIT
BROWARD COUNTY, FL.

SUPPLEMENTAL MOTION FOR NEW TRIAL

COMES NOW Defendant and presents this supplement to his motion for new trial and to arrest judgment, and says:

1. At trial, the state presented two witness, Detective Moore and Technician Sharon Hines. These witnesses were Dade County personnel. Both were involved with the acquisition, testing and distribution of certain alleged 'swabs' attributed to Defendant.

2. Detective Moore also testified in the case of State v. Behrens, case #97-22091CF10A. The alleged victim in that case was one [REDACTED] 1 In [REDACTED] case, as in this case, Moore testified he took two 'swabs' from Defendant's mouth for DNA testing. 2 At a pre-trial hearing in the [REDACTED] case to suppress the 'swabs', Defendant testified that Moore took only one

1 Defendant was acquitted after a jury trial.

2 The 'swab' acquisition occurred in the course of the Dade police stopping people at random for questioning in the 'Tamiami murders' investigation. Defendant happened to be using a telephone when they confronted him and elicited identity information from him, and later contacted Defendant at his home and pressured him to surrender a mouth-sample 'swab' for DNA comparison in the 'Tamiami murders' investigation. Defendant was excluded as a suspect in that case.

'swab' from his mouth, and not two. The trial judge in that case, however, opted to believe Moore and rejected Defendant's testimony, notwithstanding the Dade County property receipt filled out by Moore indicates only one 'swab' was taken. At trial, to the jury in the [REDACTED] case, as in this case, Moore reiterated he took two 'swabs' from Defendant. These 'swabs', i.e. *one of them*, is the alleged source on which a DNA-profile is based and attributed to Defendant for comparison to various crime-scene DNA sources (including *sub judice* and in the [REDACTED] case).³

3. After the witness Moore testified in this cause, the witness Hines testified that in fact four 'swabs' had been taken of and attributed to Defendant. Hines in fact referred to a *document* showing that one 'Teresa' had physically received the four 'swabs' in the Dade County lab, but that 'Teresa' has since retired from employment there.

4. Hines' testimony (in the midst of the jury trial in this case) that four 'swabs' were supposedly taken of Defendant, and which constitute the source from which the DNA-profile being attributed to Defendant is derived, had never before been disclosed to the defense - either in this case or in the [REDACTED] case. Likewise, the *document* to which Hines referred at trial in this case. However, all of this un-disclosed information and documentation existed and was known to the state prior to the [REDACTED] case and this case being instituted against Defendant.

5. The Defendant noticed the Court of this discovery violation, in presenting his 'chain of custody/tampering' concerns based on the surprise testimony of Hines. The Court did not conduct a Richardson hearing with respect thereto. See *State v. Evans*, 25 Fla. L. Weekly S744 (Fla. 2000), wherein the court said:

³ The police maintained from the beginning, before Defendant was even a suspect, that the perpetrator's alleged semen at the [REDACTED] scene was from the same source as that at the [REDACTED] scene (i.e. *sub judice*).

“Although defense counsel did not specifically request that the trial court conduct a Richardson hearing until after the defense rested its case, the trial court nevertheless was required to conduct a Richardson hearing upon being advised of a possible discovery violation. See, e.g., Copeland v. State, 566 So. 2d 856, 858 (Fla. 1st DCA 1990) (“There are no exact ‘magic words’ or phrases which must be used by the defense in order to necessitate the inquiry but only the fact that a discovery request has not been met.”).

A Richardson-hearing mandates inquiry as to “whether the violation (1) was willful or inadvertent; (2) was substantial or trivial; and (3) had a prejudicial effect on the aggrieved party’s trial preparation.” Id. See, e.g., Kucher v. State, 25 Fla. L. Weekly D1042a (Fla. 2nd DCA 2000) (*defense could have filed pre-trial motion to suppress related matter*); Sackett v. State, 25 Fla. L. Weekly D1582 (Fla. 2nd DCA 2000) (*could have filed a motion in limine to exclude related matter*); Loisell v. State, 23 Fla. L. Weekly D90 (Fla. 4th DCA 1997) (“it is reasonably possible that the change in appellant’s strategy between opening statement and closing argument was caused by the admission of the undiscovered statement [or matter].”).

6. The information and documentation first presented by the state through Hines’ testimony in trial could have been utilized to impeach Moore, a key state witness. Notable is that the jury in this case requested a re-reading or transcript of Moore’s testimony, unqualified by the contradictory, materially different testimony of Hines. [Consider Jones v. State, 514 So. 2d 432 (Fla. 4th DCA 1987), *that the state must disclose an oral statement of a witness when such statement materially alters a prior written or recorded statement provided in discovery.*] Furthermore, the defense was foreclosed by the state’s non-compliance with discovery from perceiving *prior to trial* an actually suspect chain of custody as to the ‘swabs’, including with Hines and the potentially critical – but undisclosed - witness ‘Teresa’. If not so obstructed, the defense would have

investigated and attacked the integrity of the 'swabs' as the source of the DNA-profile being attributed to Defendant, and thus by motion to suppress or *in limine* excluded the DNA comparisons in this case. For example, which of the 'four swabs' was used to create a DNA-profile assigned to Defendant? Was it the 'one swab' Defendant has testified Moore only took of him? Or, was it one of the 'two swabs' that Moore testifies he took of Defendant? Or, was it one of the 'two additional unaccounted for swabs' testified to by Hines (with allusion to 'Teresa' and a document as corroborative)? Compare Cridland v. State, 22 Fla. L. Weekly D1280 (Fla. 3rd DCA 1997):

The trial court erred in denying the defendant's motion to suppress the evidence seized, as the State failed to establish a proper chain of custody. "As a general rule, the state is not required to elicit testimony from every custodian in the chain. Relevant physical evidence is admissible unless there is some indication of probable tampering with the evidence." *Dodd v. State*, 537 So. 2d 626 (Fla. 3d DCA 1988). In this case, the State failed to present testimony from two witnesses who were critical links in the chain of custody. In light of the conflicting evidence as to the quantity of the cocaine seized, the State failed to prove that the cocaine seized and the cocaine introduced at trial were one and the same.

Sub judice, the evidence as to the number of 'swabs' taken from Defendant is conflicting, such that there is a substantial question and failure to prove that the 'swab' used by the state to create the DNA-profile introduced at trial and a 'swab' taken from the Defendant by Moore are one and the same. It ought be noted that this Court recognized the manifest tampering probability. The Court though mistakenly perceived itself as without jurisdiction to exclude the evidence and its fruit, rather preferring the jury to determine its probity and resolve the confusion. However, as in *Cridland v. State, supra*, the Court erred in failing to exclude the 'swabs' and its derivatives for failure of the state "to establish a proper chain of custody."

7. That it appears the state was specifically aware of this conflict in the evidence, and the existence of the witnesses and documentation establishing the conflict, long prior to

commencement of any charges against Defendant. See Henderson v. State, 24 Fla. L. Weekly S90 (Fla. 1999), that “*Florida courts have uniformly held that prosecutors are imputed with ‘constructive knowledge and possession of evidence’ held by other departments of the executive branch of Florida’s government for discovery purposes and therefore can be sanctioned for discovery violations.*” [Citations omitted].

8. That, moreover, it appears the state’s agencies performed (in or about December 1997) a more sophisticated DNA analysis involving a ‘swab’ and semen from the crime scenes in this case and in the [REDACTED] case, with a result negating the Defendant’s profile as the supposed perpetrator’s.⁴ This was done in Palm Beach County, with knowledge of the Broward State Attorney’s Office and police. The Palm Beach procedure, documents, and the witnesses involved, were never disclosed by the state though known to it. Defendant has post-verdict, since hearing Hines’ testimony at trial regarding ‘four swabs’ somehow coming into existence, learned of these Palm Beach County matters. Compare: Rainer v. State, 24 Fla. L. Weekly D895 (Fla. 4th DCA 1999) (giving of edited tape to defense, even though unedited original version is available, constitutes a discovery violation); Frierson v. State, 21 Fla. L. Weekly D1646 (Fla. 4th DCA 1996) (conviction reversed where state failed to disclose information which supported defense claim of ‘mistaken identity’, and where state caused certain witnesses to testify in a misleading or inaccurate way); Mcarthur v. State, 21 Fla. L. Weekly D921 (Fla. 4th DCA 1996) (new trial required where state mistakenly misled defense to believe it had an item in evidence which it did not, same constituting a discovery violation notwithstanding the defense knew of the item’s existence). And consider, Bailey v. State, 25 Fla. L. Weekly D2127 (Fla. 2nd DCA 2000) (counsel

⁴ See footnote ‘3’, *supra*.

ineffective for failure to discover reports and other documents containing information which could have been used to impeach a key prosecution witness).

9. That the interests of justice warrant granting a new trial in this case, even if sufficient *prima facie* evidence supports the verdict. *See, Kelley v. State*, 637 So. 2d 972 (Fla. 1st DCA 1994); *Tibbs v. State*, 397 So. 2d 1120 (Fla. 1981); and *Robinson v. State*, 462 So. 2d 471 (Fla. 1st DCA 1984). In *Robinson*, the *appellate court* reversed a conviction for rape and remanded for a new trial notwithstanding the 'sufficiency' of the evidence to support the verdict, in light of the tenuous nature of the incriminating evidence. The distinction between the 'sufficiency' of the evidence and its 'weight' is discussed in the *Kelley* opinion. *See: State v. Hart*, 632 So. 2d 134 (Fla. 4th DCA 1994), *citing and relying on Robinson, supra*:

the process of assessing whether the jury's verdict is consistent with the weight of the evidence necessarily requires that the trial judge 'invade the fact-finding arena - to act, in effect, as an additional juror.' * * * Furthermore, *if the 'jury has been deceived as to the force and credibility of the evidence,' then the trial court's duty to grant a new trial is even stronger*. *Cloud [v. State]*, 110 So 2d [669,] 673 [(Fla. 1959)].

The evidence in Defendant's case is wholly lacking in any corroboration of the DNA-profile evidence; and, that evidence in turn is dependent upon an *alleged* 'swab' from among one, two or *four* supposed sources. As this Court determined to leave it to the jury's resolution, yet Defendant has been deprived of any fair opportunity prior to trial to investigate and prepare as to the '*chain of custody*' and probable '*tampering*' with the 'swab' creations – *precisely to have assisted the trier of fact therein*. Coupled with the alibi defense, the failure of the useable fingerprints and hair samples to comport with Defendant's, and the failure of the alleged 'victim' to identify the Defendant, the state's evidence (or lack of evidence) presents a significant likelihood that an unjust conviction has

resulted. Moreover, inasmuch as the '*chain of custody*' has never been established to rebut the manifest probability of '*tampering*' with the swab-evidence, "the '*jury has been deceived as to the force and credibility of th[at] evidence, ' [such that] the trial court's duty to grant a new trial is even stronger*.'" *Cloud v. State*, 110 So. 2d at 673. It is an imperative of this Court to assure that justice has prevailed. Consider, *State v. Harris*, 20 Fla. L. Weekly D1578 (Fla. 5th DCA 1995), distinguishing its facts with *Tibbs*', to wit:

Tibbs was convicted and sentenced to death primarily upon the uncorroborated testimony of a rape victim, whose testimony was impeached in several respects and who was admittedly under the influence of marijuana at the time of the incident. Unlike the *Tibbs* case, the essential facts in the instant case are corroborated by several independent eyewitnesses and are not in serious dispute.

However, in Defendant's case, there is no such corroboration of the essential facts, and the essential facts are in serious dispute.

10. The jury's verdicts' integrity in this case have been undermined for, inter alia, the reasons aforesaid.

WHEREFFORE, this Court ought grant a new trial in the manifest interests of justice.

I HEREBY CERTIFY a copy has been provided to the Office of the State Attorney, 201 SE 6th Street, Ft. Lauderdale, FL, this 27 November 2000.

KAYO MORGAN
Attorney at Law
432 NE 3rd Avenue
Ft. Lauderdale, FL 33301
(954) 523-5296

KAYO MORGAN
Attorney for Defendant
Bar #: 444677

☒ 17th Judicial Circuit in and for Broward County
☐ In the County Court in and for Broward County

CLOCK IN
Filed in Open Court,

DIVISION:
☒ Criminal
☐ Traffic
☐ Other

ORDER

ON DEC 15 2000

BY M. Hayne

THE STATE OF FLORIDA VS.

Ernesto Behrens

CASE NUMBER

DEFENDANT

98 5739CF10A

CHARGE I-II Armed Sexual Battery

DEFENSE MOTION TO For New Trial IS HEREBY
Denied FOR REASONS AS STATED ON THE RECORD
IN OPEN COURT.

DONE AND ORDERED THIS 15 DAY OF DEC, 2000, IN

BROWARD COUNTY, FLORIDA.

NUN Pro Tunc
to 11:30.00

[Signature]
JUDGE

COPIES:

BSO

SAO

268

IN THE CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT

IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs

ERNESTO BEHRENS,

Defendant.

Case #: 98-5739 CF10A

Judge: HOROWITZ for ROTHCHILD

RECEIVED
CLERK, CIRCUIT COURT
BROWARD COUNTY, FL.
2000 NOV 28 AM 11:42
FELONY

MOTION TO CORRECT PRIOR RECORD
AND OBJECTION TO UPWARD DEPARTURE SENTENCE

COMES NOW Defendant and moves the Court correct the prior record of Defendant, including for purposes of upward departure, for this:

1. Defendant's prior criminal history includes his conviction and sentence in case #90-1320 CF10A, in the 17th Judicial Circuit in and for Broward County, Florida. This judgment and sentence were imposed 14 May 1992 pursuant to a plea bargain.

2. Defendant agreed to plead 'guilty in his own best interest' to, the highest offense to which he agreed to plead being a 'second-degree felony' as set forth in the 'Acknowledgment of Plea and Waiver of Rights' form, the Honorable Judge John Frusciante, Circuit Judge, presiding. *See copy attached hereto.*

3. That it appears to Defendant this Court has construed the plea in said case to be for a felony punishable by life. However, as the plea form clearly reflects the maximum penalty for the highest offense to which Defendant pled was 15 years, not life.

4. That it appears to Defendant this Court has departed from the applicable guidelines on the erroneous premise that the plea in said case was for a felony punishable by life.

5. The Court therefore needs to correct its sentencing order to accurately reflect the level of prior offenses to which Defendant in fact negotiated his plea bargain in the said earlier case, and sentence Defendant sub judice in accord with the applicable guidelines without departure.

WHEREFORE, Defendant so moves the Court.

I HEREBY CERTIFY a copy has been provided to the Office of the State Attorney, 201 SE 6th Street, Ft. Lauderdale, FL, this 28 November 2000.

KAYO MORGAN
Attorney at Law
432 NE 3rd Avenue
Ft. Lauderdale, FL 33301
(954) 523-5296

KAYO MORGAN
Attorney for Defendant
Bar #: 444677

**In the Circuit Court of the Seventeenth
Judicial Circuit
In and for Broward County, Florida**

CRIMINAL DIVISION
JUDGE JOHN A. FRUSCIANO

STATE OF FLORIDA vs. ERNESTO BENARDI

CASE NO.
90-1320 CF

ACKNOWLEDGMENT OF PLEA AND WAIVER OF RIGHTS

1. I am the above named defendant, and I enter my plea of: guilty/nolo contendere in my best interest, to the following charges:

Armed Burglary (dwelling) F-267
Fire Arms Poss
Carrying Threat Gun 85 (2nd)
Carrying Threat Gun 85 (2nd)

Maximum penalties

15 yrs
5 yrs
5 yrs
5 yrs

2. I understand that I have the right to be represented by an attorney at all stages of these proceedings until this case is terminated; that I have a right to a jury trial; that I have the right to compel the attendance of witnesses on my behalf; that I have the right to confront and cross-examine witnesses testifying against me; that I have the right not to testify or to incriminate myself; and that I may remain silent if I so choose. I hereby waive and give up all of these rights by entering this plea. (E.B.)

3. I understand that by my plea, I give up the right to appeal any decisions made by the court to date. I understand that I have the right to appeal only the jurisdiction of the court to enter the judgment and the legality of sentence entered herein and that any such appeal must be filed within thirty days from the entry of judgment in this case. If I cannot afford a lawyer for appeal, one will be appointed for me. (E.B.)

4. I admit that there is a factual basis for the charges to which I am pleading, and I agree that the court may rely on the statements contained in the probable cause affidavit and police reports in determining this factual basis.

5. I understand that if the court accepts my plea to these charges, my sentence will be

2 yrs Community Control followed by 3 yrs Probation Filed in Open Court
Commence date to commence on 12/1/92 NOV 27 1992

Other than this proposed sentence, nobody has made any promises or representations to me, nor has anyone threatened me or in any way forced me to enter this plea. I am doing this freely and voluntarily.

5. I have had enough time to fully discuss the facts and circumstances surrounding my arrest with my lawyer and I do not need any further time to review this case with my attorney before entering into this plea.
6. I am represented by the undersigned attorney, with whom I have discussed the charges against me and any and all possible defenses to these charges. Any questions I have had about my case have been answered to my satisfaction, and I feel my attorney has represented me effectively and I am satisfied with this representation.
7. I understand that any answers contained in this Acknowledgment of Plea and Waiver of Rights Form can be used against me in a prosecution for perjury, or a violation of probation/community control proceeding.
8. I waive any right I might have to a Pre-Sentence Investigation.
9. I understand that, if I am not a United States citizen, a plea in this case could have negative consequences on my immigration status including, but not limited to, deportation from this country.
10. I am not under the influence of any alcoholic beverage, drug or medicine at the time I sign this plea form. I am not suffering from any mental or physical problems which affect my understanding of this plea.
11. I have personally read the foregoing Acknowledgment of Plea and Waiver of Rights, and I have personally placed my initials over the number of each of the sections I have read. I understand everything stated in the foregoing Acknowledgment of Plea and Waiver of Rights, and I wish to enter my plea at this time.

Dated 5/14/92Signed 
DEFENDANT

I am the attorney of record and I have explained each of the above rights to the Defendant, and to the best of my knowledge and belief the defendant fully understands each and every one of them and the defendant has placed his/her initials over the numbers of each of those sections above. I have explained the nature of the charges and any possible defenses to these charges with the defendant, and I hereby concur with the defendant's decision to waive the above rights and to enter this plea.

Dated 5/14/92Signed 
ATTORNEY FOR DEFENDANT

12-8

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA, 2000 NOV 30 PM 2:42 CASE NO.: 98-5739 CF10A

Plaintiff,

JUDGE: HOROWITZ

vs.

RECEIVED
CLERK, CIRCUIT COUNTY COURT
BROWARD COUNTY, FL.

ERNESTO BEHRENS,

Defendant.

JOINT STIPULATION FOR SUBSTITUTION OF COUNSEL

Undersigned counsel, JAMES S. LEWIS, ESQ., and KAYO MORGAN, ESQ., hereby stipulate and agree that KAYO MORGAN, ESQ., shall be substituted as attorney of record in the above-styled cause.

All future correspondence and pleadings shall be sent to KAYO MORGAN, ESQ., 423-NE 3rd Avenue, Fort Lauderdale, Florida 33301.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by U.S. Mail/Hand delivery to the OFFICE OF THE STATE ATTORNEY, 201 Southeast 6th Street, Fort Lauderdale, Florida 33301 this 30th day of NOVEMBER 2000.

JAMES S. LEWIS, ESQ.
Suite 100
500 Southeast 6th Street
Fort Lauderdale, FL 33301
Telephone (954) 523-7949

KAYO MORGAN, ESQ.
432 Northeast 3rd Avenue
Fort Lauderdale, FL 33301-3234
Telephone (954) 523-5296

By: _____

JAMES S. LEWIS, ESQ.
Florida Bar No.: 318957

By: _____

KAYO MORGAN, ESQ.
Florida Bar No.: 474677

12-8
IN THE CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT

IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs

ERNESTO BEHRENS,

Defendant.

Case #: 98-5739 CF10A

Judge: HOROWITZ

RECEIVED
LEAH CIRCUIT COURT
BROWARD COUNTY, FL.
2000 DEC -1 PM 4:20
FELONY

MOTION TO RESCHEDULE HEARING

COMES NOW counsel undersigned and moves the Court reschedule to concluding hearing on Defendant's motion for new trial and to arrest judgments, for this:

1. Defendant has retained undersigned to conclude his arguments for a new trial, based on newly discovered evidence. Counsel has filed a motion setting forth the essential grounds; further grounds will be argued *ore tenus*.
2. The hearing had been scheduled for 1 December 2000. However, counsel undersigned is required to be in Key West that day and cannot reschedule that matter. (*A felony case, J. Payne*).
3. That in any event counsel undersigned will need a short time (*e.g. three weeks*) within which to contact certain witnesses and familiarize himself with aspects of the recent trial in this cause.
4. That counsel has contacted *Dennis Siegel, Assistant State Attorney*, and he has no objection to rescheduling this cause.

WHEREFORE, Defendant moves the Court reschedule the hearing.

I HEREBY CERTIFY a copy has been provided to the Office of the State Attorney, 201 SE 6th Street, Ft. Lauderdale, FL, this 30 November 2000.

KAYO MORGAN
Attorney at Law
432 NE 3rd Avenue
Ft. Lauderdale, FL 33301
(954) 523-5296

KAYO MORGAN
Attorney for Defendant
Bar #: 444677

9
IN THE CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT

IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Case #: 98-5739 CF10A

Plaintiff,

Judge: HOROWITZ

vs

ERNESTO BEHRENS,

Defendant.

2000 DEC -1 PM 4:20
FELONY
RECEIVED
LENN CIRCUIT COURT
BROWARD COUNTY, FL.

ORDER RESCHEDULING HEARING ON NEW TRIAL MOTION

THIS CAUSE having come on upon motion of the Defendant to reschedule the final hearing on the defense motion for new trial, the Court having considered the same and being adequately advised in the premises, it is hereby

ORDERED AND ADJUDGED that the said motion be, and same is hereby, GRANTED,
to wit: The hearing heretofore scheduled for 1 December 2000, a Friday, is cancelled and shall be rescheduled in due course. New date: December 8, 2000 at 10:30am.

DONE AND ORDERED in Broward County, FL this 30 November 2000.


CIRCUIT JUDGE

Cc SAO
 Defense

IN THE CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

VS

ERNESTO BEHRENS,

Defendant.

Case #: 98-5739 CF10A

Judge: HOROWITZ

2000 DEC -1 PM 4:20
RECEIVED
CLERK - CIRCUIT COURT
BROWARD COUNTY, FL.

MOTION TO MAINTAIN DEFENDANT IN COUNTY JAIL

COMES NOW counsel undersigned and moves the Court order that Defendant be maintained at the county jail pending disposition of his motion for new trial, and says:

1. The Court has ordered that Defendant be maintained at the county jail, and not transported to Florida State Prison, until disposition of his pending motion for new trial.
2. That counsel undersigned has been recently retained to conclude said motion, and has requested the hearing be rescheduled from 1 December 2000 to accommodate an existing conflict and the need to familiarize himself with the cause. (It is estimated no more than three weeks will suffice).

WHEREFORE, Defendant moves the Court extend its order to maintain Defendant at the county jail pending disposition of his motion for new trial.

I HEREBY CERTIFY a copy has been provided to the Office of the State Attorney, 201 SE 6th Street, Ft. Lauderdale, FL, this 30 November 2000.

KAYO MORGAN
Attorney at Law
432 NE 3rd Avenue
Ft. Lauderdale, FL 33301
(954) 523-5296

KAYO MORGAN
Attorney for Defendant
Bar #: 444677

12-8

IN THE CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT

IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

Case #: 98-5739 CF10A

Judge: HOROWITZ

vs

ERNESTO BEHRENS,

Defendant.

RECEIVED
17TH JUDICIAL CIRCUIT COURT
BROWARD COUNTY, FL.
2000 DEC - 1 PM 4:20
FELONY

ORDER TO MAINTAIN DEFENDANT AT COUNTY JAIL

THIS CAUSE having come on upon motion of the Defendant to maintain Defendant at the county jail until disposition of the pending defense motion for new trial, the Court having considered the same and being adequately advised in the premises, it is hereby

ORDERED AND ADJUDGED that the said motion be, and same is hereby, GRANTED, to wit: The order heretofore entered by the Court to maintain Defendant at the county jail pending disposition of the motion for new trial is extended to a time after 1 December 2000 which shall be designated by further order of this Court.

DONE AND ORDERED in Broward County, FL this 30 November 2000.


CIRCUIT JUDGE

Cc SAO
 Defense

12-8

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

CASE NO.: 98-5739 CF10A

JUDGE: HOROWITZ

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BROWARD COUNTY COURT
2000 DEC -1
FELONY

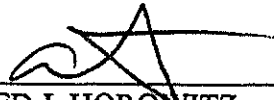
ORDER GRANTING JOINT STIPULATION FOR SUBSTITUTION OF COUNSEL

THIS CAUSE came before the Court on the Joint Stipulation for Substitution of Counsel and the Court having considered the same and being otherwise duly advised in the premises, it is, therefore,

ORDERED AND ADJUDGED as follows:

1. The Joint Stipulation for Substitution of Counsel is hereby approved.
2. JAMES S. LEWIS, ESQ. shall be relieved of all further responsibility for representation of the Defendant herein.
3. KAYO MORGAN, ESQ. shall be permitted to appear as counsel of record for the Defendant in all further proceedings herein.
4. All future pleadings shall be served upon KAYO MORGAN, ESQ., 432 NE 3rd Avenue, Fort Lauderdale, FL 33301-3234.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this
1 day of December, 2000.


ALFRED J. HOROWITZ
Circuit Court Judge

Copies furnished to:
James S. Lewis, Esq.
Kayo Morgan, Esq.
Office of the State Attorney

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 98-5739 CF10A
JUDGE: HOROWITZ

RECEIVED
CLERK CIRCUIT COURT
BROWARD COUNTY, FLORIDA

2000 DEC -5 PM 2:28

APPEALS

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

NOTICE OF APPEAL

DEFENDANT FOUND INDIGENT FOR PURPOSES OF APPEAL

NOTICE IS HEREBY GIVEN, that the Defendant, ERNESTO BEHRENS appeals to the Fourth District Court of Appeals of the State of Florida the Judgment and Sentence, entered on November 14, 2000, by the Honorable Alfred J. Horowitz. A copy of the indigency order is attached.

DATED this 4th ^{December} day November, 2000.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded by U.S. Mail/Hand delivery to the OFFICE OF THE STATE ATTORNEY, 201 SE 6th Street, Fort Lauderdale, Florida 33301 this 4th ^{December} day November, 2000.

JAMES S. LEWIS, ESQ.
Attorney for Defendant
Suite 100
500 SE 6th Street
Fort Lauderdale, FL 33301
Telephone: (954) 523-7949

By: _____

JAMES S. LEWIS, ESQ.
Florida Bar No.: 318957

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 98-5739 CF10A
JUDGE: HOROWITZ

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

RECEIVED
LEWIS COUNTY COURT
BROWARD COUNTY
2000 NOV 28 PM 1:23
FELONY

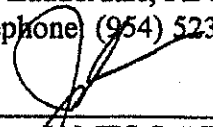
**MOTION TO FIND DEFENDANT INDIGENT FOR PURPOSES OF APPEAL
AND TO APPOINT PUBLIC DEFENDER OF THE SEVENTEENTH
JUDICIAL CIRCUIT FOR PURPOSES OF APPEAL**

The Defendant, ERNESTO BEHRENS, by and through his undersigned counsel requests this Honorable Court to find him indigent for purposes of appeal and to appoint the Public Defender of the Seventeenth Judicial Circuit for purposes of appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded by U.S. Mail/Hand delivery to the OFFICE OF THE STATE ATTORNEY, 201 SE 6th Street, Fort Lauderdale, Florida 33301 this 27th day November, 2000.

JAMES S. LEWIS, ESQ.
Attorney for Defendant
Suite 100
500 SE 6th Street
Fort Lauderdale, FL 33301
Telephone (954) 523-7949

By: 
JAMES S. LEWIS, ESQ.
Florida Bar No.: 318957

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

2000 DEC -5 AM 9:33

RECEIVED CASE NO.: 98-5739 CF10A
CLERK, CIRCUIT COURT JUDGE HOROWITZ
BROWARD COUNTY, FL.

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

ORDER FINDING DEFENDANT INDIGENT FOR PURPOSES OF APPEAL

THIS CAUSE having come before the Court on motion of the Defendant, ERNESTO BEHRENS to be found indigent for purposes of appeal and the Court being advised in the premises, it is hereby:

ORDERED AND ADJUDGED that the Court hereby finds the Defendant to be indigent for purposes of appeal and appoints the Public Defender's Office of the Seventeenth Judicial Circuit to represent the Defendant in such appeal. James S. Lewis, Esq. shall be allowed to withdraw as attorney of record.

DONE AND ORDERED in Chambers, Broward County, Fort Lauderdale, Florida this 28 day of November, 2000.


ALFRED J. HOROWITZ
Circuit Court Judge

Copies furnished to:
James S. Lewis, Esq.
Office of the State Attorney
Public Defender's Office, Seventeenth Judicial Circuit

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 98-5739 CF10A
JUDGE: HOROWITZ

STATE OF FLORIDA,
Plaintiff,

vs.

ERNESTO BEHRENS,
Defendant.

RECEIVED
CLERK CIRCUIT COURT
BROWARD COUNTY, FLORIDA

2000 DEC -5 PM 2:29

APPEALS

STATEMENT OF JUDICIAL ACTS TO BE REVIEWED

COMES NOW, the Defendant ERNESTO BEHRENS, by and through his undersigned counsel, and files this Statement of Judicial Acts to be reviewed in the above styled case.

1. The Defendant was tried in this cause beginning on August 9, 2000 and concluding on September 14, 2000, before the Honorable Alfred J. Horowitz.
2. The verdict in this case was contrary to law and the weight of the evidence.
3. The state failed to bring forth competent and un rebutted evidence of Defendant's guilt.
4. State failed to provide any evidence or rebut the testimony of the defense's alibi witness.
5. The Court erred in the decision of matters of law during the course of the trial.
6. The Court erroneously admitted evidence presented by the State, specifically, oral swabs, and sheets without proof of chain of custody, despite the probable tampering asserted by the defense.
7. The Court erroneously admitted a hand written list of names produced by the state, disclosed for the first time during the trial, thus prejudicing the defense and violating discovery rules.
8. The Court permitted the jury to hear that Ernesto Behrens was on a list of suspects in a Dade County sexual battery and murder case.

9. The Court failed to strike the potential jurors, after defense's objection to an overly prejudicial statement by a juror who was subsequently struck for cause.
10. The Defendant was prejudiced by the way in which the trial was commenced.
11. The Court failed to properly swear in the venire panel before voir dire commenced.
12. The Court erroneously permitted the trial for the Defendant to be delayed. The jury in this case was picked on August 10, 2000. The chosen panel, which was not sworn, was then told to return on September 11, 2000 for opening statements. This delay severely prejudiced the Defendant's case.
13. The Defendant did not receive a fair trial, as the defense has received information, which may amount to jury misconduct. [REDACTED], alleged victim of sexual battery in which the Defendant was previously tried and found not guilty, had contact during the trial and jury deliberations with jurors and alternative jurors.
14. Personal attacks by the Assistant State Attorney on Defendant and defense counsel during closing arguments were highly prejudicial, thus denying Defendant a fair trial
15. The Court erred by not allowing the testimony of Paula Turgeon as to the Defendant place of birth.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded by U.S. Mail/Hand delivery the OFFICE OF THE STATE ATTORNEY, 201 SE 6th Street, Fort Lauderdale, Florida 33301 this 4th day of ~~November~~ December, 2000.

JAMES S. LEWIS, ESQ.
Attorney for Defendant
Suite 100
500 SE 6th Street
Fort Lauderdale, FL 33301
Telephone: (954) 523-7949

By: 
JAMES S. LEWIS, ESQ.
Florida Bar No.: 318957

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 98-5739 CF10A

JUDGE: HOROWITZ

STATE OF FLORIDA,
Plaintiff,

vs.

ERNESTO BEHRENS,
Defendant.

DESIGNATION TO REPORTER AND REPORTER'S ACKNOWLEDGMENT

Defendant ERNESTO BEHRENS, files this Designation to Reporter and directs Official Court Reporter, of Williams & Hahn Court Reporting Services, (954) 463-5071 to transcribe an original and two (2) copies of the following to be used in this appeal:

1. The transcript of the trial including jury selection which commenced on August 9, 2000 through August 10, 2000 and continued on September 11, 12, 13, 14 and 15, 2000, and the sentencing which took place on November 13, 2000 and November 14, 2000.
2. The court reporter is directed to file the original with the Clerk of the lower court and to serve one copy on each of the following:

Office of the Public Defender, Seventeenth Judicial Circuit
201 SE 6th Street
Fort Lauderdale, FL 33301

Office of the Assistant Attorney General
1655 Palm Beach Lakes Boulevard, Suite 300
West Palm Beach, FL 33401-2299

Respectfully submitted,

JAMES S. LEWIS, ESQ.
Attorney for Defendant
500 SE 6th Street, Suite 100
Fort Lauderdale, FL 33301
Telephone (954) 523-7949

By: _____

JAMES S. LEWIS, ESQ.
Florida Bar No.: 318957

RECEIVED
CLERK CIRCUIT COURT
BROWARD COUNTY, FLORIDA

2000 DEC -5 PM 2:28

APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded by U.S. Mail/Hand delivery to the OFFICE OF THE STATE ATTORNEY, 201 SE 6th Street, Fort Lauderdale, Florida 33301 and WILLIAMS & HAHN COURT REPORTING SERVICES, INC., 523 South Andrews Avenue, Fort Lauderdale, FL 33301 this 4th December day of ~~November~~, 2000.

JAMES S. LEWIS, ESQ.
Attorney for Defendant
500 SE 6th Street, Suite 100
Fort Lauderdale, FL 33301
Telephone (954) 523-7949

By: [Signature]
JAMES S. LEWIS, ESQ.
Florida Bar No.: 318957

REPORTER'S ACKNOWLEDGMENT

1. The foregoing designation was served on _____, 2000 and received on _____, 2000.
2. Satisfactory arrangements have (____) have not (____) been made for payment of the transcript cost. These financial arrangements were completed on _____.
3. Number of trial or hearing days _____.
4. Estimated number of transcript pages _____.
5. The transcript will be available in approximately _____ days and will be filed on or before the _____ day of _____, 2000.

OFFICIAL COURT REPORTER

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 98-5739 CF10A

JUDGE: HOROWITZ

STATE OF FLORIDA,
Plaintiff,

vs.

ERNESTO BEHRENS,
Defendant.

RECEIVED
CLERK CIRCUIT COURT
BROWARD COUNTY, FLORIDA

2000 DEC -5 PM 2:29

APPEALS

DIRECTIONS TO THE CLERK

The Defendant/Appellant asks that the Clerk insert and recite in full and include in the Record on Appeal for the Clerk of the Circuit Court the following:

1. Transcript of all pretrial hearings, jury selection which commenced on August 9, 2000 through August 10, 2000 and continued on September 11, 12, 13, 14 and 15, 2000 and the sentencing which took place on November 13, 2000 and November 14, 2000 before the Honorable Alfred J. Horowitz in regard to the above styled case.
2. Copy of the Judgment and Sentence and/or disposition sheet.
3. Any and all pleadings in the case including the Information and Sentencing Score

Sheet

DATED THIS 4th December day of ~~November~~, 2000.

JAMES S. LEWIS, ESQ.
Attorney for Defendant
500 SE 6th Street, Suite 100
Fort Lauderdale, FL 33301
Telephone (954) 523-7949

By: 

JAMES S. LEWIS, ESQ.
Florida Bar No.: 318957

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded by U.S. Mail/Hand delivery to the OFFICE OF THE STATE ATTORNEY, 201 SE 6th Street, Fort Lauderdale, Florida 33301 this 4th day of ~~November~~ ^{December}, 2000.

JAMES S. LEWIS, ESQ.
Attorney for Defendant
Suite 100
500 SE 6th Street
Fort Lauderdale, FL 33301
Telephone: (954) 523-7949

By: _____

JAMES S. LEWIS, ESQ.
Florida Bar No.: 318957

IN THE CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT

IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Case #: 98-5739 CF10A

Plaintiff,

Judge: ROTHSCHILD

vs

ERNESTO BEHRENS,

Defendant.

APPEALS
2000 DEC 13 AM 9:08
RECEIVED
CLERK CIRCUIT COURT
BROWARD COUNTY, FLORIDA

NOTICE OF APPEAL

TO THE CLERK OF COURT:

Please take note of this Defendant's appeal to the 4th District Court of Appeal, West Palm Beach, FL, to review the adverse jury verdicts and orders of judgment rendered 14 September 2000, the sentencing order entered 13 November 2000, and the order denying the motion for new trial entered 13 November 2000; the *Honorable Judge Horowitz, Circuit Court Judge*, 17th Judicial Circuit, Broward County, FL, having presided. Said orders are final orders subject to direct appeal.

NOTE: *Defendant is indigent and the Court has appointed the Office of the Public Defender to represent Defendant in this appeal.*

I HEREBY CERTIFY a copy hereof has been delivered to the Office of the State Attorney, in court, and mailed to the Office of the Attorney General, 1655 Palm Beach Lakes Blvd, Suite 300, West Palm Beach, FL, this 13 December 2000.

KAYO E. MORGAN
Attorney at Law
432 NE 3rd Avenue
Ft. Lauderdale, FL 33301
(954) 573-5296

KAYO E. MORGAN
Attorney for Defendant
Bar #: 444677

4
C
IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

January 24, 2001

CASE NO.: 4D00-4484
L.T. No. : 98-5739 CF10A

Ernesto Behrens

v.

State Of Florida

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that the court reporter's request for an extension of time to file the transcript with the circuit court is granted, and the time for preparation and service of the transcript is hereby extended to and including February 16, 2001. Attorneys shall notify this court of non-compliance; further,

ORDERED that all other time frames pertaining to the filing of the record and briefs are hereby extended accordingly. See Fla. R. App. P. 9.300(b). (Appellant's initial brief shall be filed within thirty (30) days from service of the index to the record.)

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

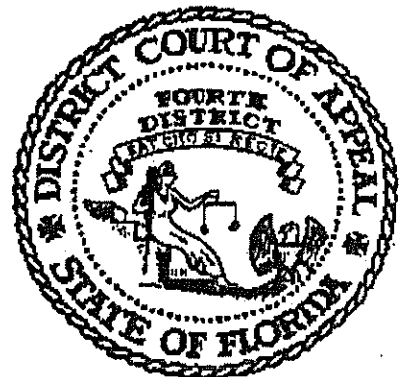
State Attorney- Brow.
James S. Lewis
Attorney General-W.P.B.

Official Reporting
Public Defender-Brow.

Howard Forman, Clerk
Public Defender-P.B.

kb

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

February 9, 2001

CASE NO.: 4D00-4484
L.T. No. : 98-5739 CF10A

Ernesto Behrens

v.

State Of Florida

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that the court reporter's (Erlinda Rodriguez of Williams & Hahn Court Reporting Services) request for an extension of time to file the transcript with the circuit court is granted, and the time for preparation and service of the transcript is hereby extended fifty (50) days from the date of this order. Attorneys shall notify this court of non-compliance; further,

ORDERED that all other time frames pertaining to the filing of the record and briefs are hereby extended accordingly. See Fla. R. App. P. 9.300(b). (Appellant's initial brief shall be filed within thirty (30) days from service of the index to the record.)

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

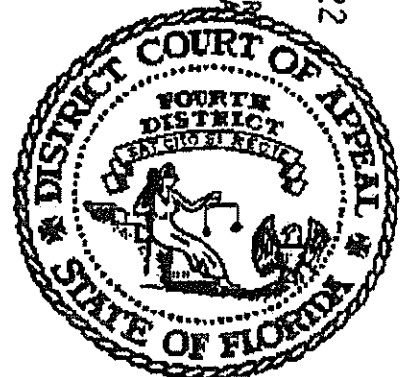
Official Reporting
Howard Forman, Clerk
Kayo E. Morgan

Williams & Hahn, Inc.
James S. Lewis
Public Defender-P.B.

State Attorney- Brow.
Public Defender-Brow.
Attorney General-W.P.B.

kb

Marilyn Beutenmuller
MARILYN BEUTENMULLER, Clerk
Fourth District Court of Appeal



RECEIVED
CLERK CIRCUIT COURT
BROWARD COUNTY, FLORIDA

2001 FEB 12 PM 2:22

APPEALS

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

February 15, 2001

CASE NO.: 4D00-4484
L.T. No. : 98-5739 CF10A

Ernesto Behrens

v.

State Of Florida

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that appellant's motion filed January 23, 2001, to relinquish jurisdiction is granted. Jurisdiction is hereby relinquished to the trial court for thirty (30) days for consideration of *appellant's supplemental motion for new trial and motion to correct prior record and objection to upward departure sentence.*

The appellant shall forward to this court a copy of any order issued during relinquishment. It is further ordered that the appellant shall monitor this proceeding in the trial court. If further time is needed beyond this relinquishment period, it shall be the duty of appellant to request an extension of time by proper motion to this court. This case shall proceed in this court upon expiration of relinquishment unless otherwise notified in writing by the parties.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

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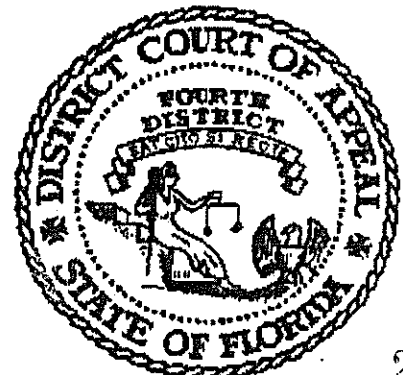
State Attorney- Brow.
Attorney General-W.P.B.

Howard Forman, Clerk
Hon. Alfred J. Horowitz

Kayo E. Morgan

ch

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal





IN THE CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY FLORIDA

STATE OF FLORIDA,

Case #: 98-5739 CF10A

Plaintiff,

Judges: COHN / ROTHSCCHILD / HOROWITZ

vs

ERNESTO BEHRENS,

Defendant.

APPEALS
2001 MAR 16 AM 10:48
RECEIVED
CLERK CIRCUIT COURT
BROWARD COUNTY, FLORIDA

DESIGNATIONS TO COURT REPORTER

TO: WILLIAMS & HAHN, INC.
Court Reporters
Ft. Lauderdale, FL
Fax: 463-5073

CAPITOL REPORTERS, INC.
600 South Andrews Avenue, Suite #401
Ft. Lauderdale, FL 33301
Fax: 463-3799

Please transcribe the proceedings in this cause, including the entire jury voir dire, the entire trial and sentencing, which occurred the following times before the Honorable Alfred Horowitz, to wit: 7/10/00; 7/21/00; 8/9/00; 8/10/00; 8/29/00; 9/11-14/00, inclusive; 9/29/00; 11/2/00; 11/13/00; and 12/15/00.

Please duly file the completed transcripts with the clerk of court for inclusion in the record on the appeal of this case.

I HEREBY CERTIFY a copy hereof has been delivered to the Office of the State Attorney, 201 SE 6th Street, Ft. Lauderdale, FL this 15 March 2001.

KAYO E. MORGAN, P.A.
Attorney at Law
432 NE 3rd Avenue
Ft. Lauderdale, FL 33301
(954) 523-5296


KAYO MORGAN
Attorney for Defendant
Bar #: 444677

IN THE CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT

IN AND FOR BROWARD COUNTY FLORIDA

STATE OF FLORIDA,

Case #: 98-5739 CF10A

Plaintiff,

Judges: COHN / ROTHSCCHILD / HEROWITZ

vs

ERNESTO BEHRENS,

Defendant.

APPEALS
2001 MAR 16 AM 10:48
RECEIVED
CLERK OF CIRCUIT COURT
BROWARD COUNTY, FLORIDA

DESIGNATIONS TO COURT REPORTER

TO: ESQUIRE DEPOSITION SERVICES

P.O. Box 460070

Fort Lauderdale, FL 33346

Fax #: 522-3621

Please transcribe the proceedings in this cause which occurred the following times before the Honorable James Cohn, to wit: 7/9/98; 10/19/98; 12/14/98; 12/18/98; 1/15/99; 4/15/99; 4/27/99; 6/16/99; and 6/24/99.

Please duly file the completed transcripts with the clerk of court for inclusion in the record on the appeal of this case.

I HEREBY CERTIFY a copy hereof has been delivered to the Office of the State Attorney, 201 SE 6th Street, Ft. Lauderdale, FL this 15 March 2001.

KAYO E. MORGAN, P.A.

Attorney at Law

432 NE 3rd Avenue

Ft. Lauderdale, FL 33301

(954) 523-5296

KAYO MORGAN

Attorney for Defendant

Bar #: 444677

IN THE CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY FLORIDA

STATE OF FLORIDA,

Case #: 98-5739 CF10A

Plaintiff,

Judges: COHN / ROTHSCHILD / HOROWITZ

vs

ERNESTO BEHRENS,

Defendant.

APPROPRIATE
2001 MAR 16 AM 10:48
RECEIVED
CLERK CIRCUIT COURT
BROWARD COUNTY, FLORIDA

AMENDED DESIGNATIONS TO COURT REPORTER

TO: ESQUIRE DEPOSITION SERVICES
P.O. Box 460070
Fort Lauderdale, FL 33346
Fax #: 522-3621

Please transcribe the proceedings in this cause which occurred the following times before the Honorable Ronald Rothschild, to wit: 8/4/99; 9/30/99; 11/2/99; 11/12/99; 11/30/99; 12/17/99; 2/17/00; 3/24/00; 6/2/00; 6/13/00; 6/23/00; 6/29/00; 6/30/00; 7/5-6/00, inclusive; and 7/18/00.

Please duly file the completed transcripts with the clerk of court for inclusion in the record on the appeal of this case.

I HEREBY CERTIFY a copy hereof has been delivered to the Office of the State Attorney, 201 SE 6th Street, Ft. Lauderdale, FL this 14 March 2001.

KAYO E. MORGAN, P.A.
Attorney at Law
432 NE 3rd Avenue
Ft. Lauderdale, FL 33301
(954) 523-5296

KAYO MORGAN
Attorney for Defendant
Bar #: 444677

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

March 22, 2001

CASE NO.: 4D00-4484
L.T. No. : 98-5739 CF10A

Ernesto Behrens

v.

State Of Florida

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that appellant's motion filed March 15, 2001, to extend relinquishment of jurisdiction to trial court is granted. The relinquishment period is hereby extended thirty (30) days from the date of this order.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

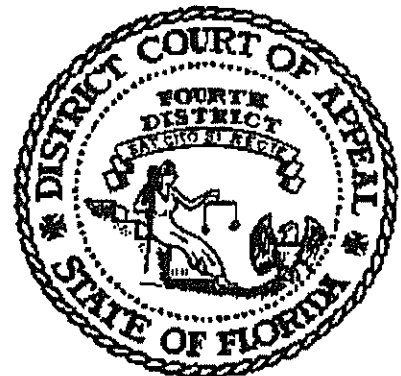
State Attorney- Brow.
Attorney General-W.P.B.

Howard Forman, Clerk
Hon. Alfred J. Horowitz

Kayo E. Morgan

ch

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal



Appeal
[Signature]

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

ERNESTO BEHRENS,
Defendant/Appellant,

CASE NO.: 98-5739CF10A

JUDGE: ROTHSCCHILD

vs.
STATE OF FLORIDA,
Plaintiff/Appellee.

**CORRECTED DESIGNATION TO THE COURT
REPORTER, AND COURT REPORTER'S
ACKNOWLEDGMENT**

2001 APR 25 AM 10:05
CLERK OF THE COURT
BROWARD COUNTY, FLORIDA
APR 11 5

ERNESTO BEHRENS Defendant/Appellant, files this Corrected Designation to Court Reporter as the two previously filed Designations to Court Reporter did not include all of the dates required for full appellate review, and directs the court reporter to transcribe an original and two (2) copies of the following portions of the trial proceedings which must be included in the appeal record so as to enable the appellate court to conduct a full and adequate review:

1. The proceedings recorded by L. Foren of Official Reporting on July, 10, 2000 before the Honorable Ronald Rothschild.
2. The proceedings recorded by D. Pearlman of Viva Voce on July, 21, 2000 before the Honorable Ronald Rothschild.
3. The trial proceedings, including voir dire, recorded by E. Rodriguez of Hahn & Bailey on August 9, 2000 and August 10, 2000 before the Honorable Alfred Horowitz.
4. The proceedings recorded by C. Jasik of Official Reporting on August 29, 2000 before the Honorable Alfred Horowitz.
5. The trial proceedings recorded by C. Jasik of Official Reporting on September 11, 2000, September 12, 2000, September 13, 2000 and September 14, 2000 before the Honorable Alfred Horowitz.
6. The proceedings recorded by C. Jasik of Official Reporting on November 2, 2000 before the Honorable Alfred Horowitz.
7. The sentencing proceedings recorded by E. Rodriguez of Hahn & Bailey on November 13, 2000 before

the Honorable Alfred Horowitz.

8. The court reporter is directed to file the original and two (2) copies with the clerk of the lower tribunal.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by interoffice mail to the Office of the State Attorney, Broward County Courthouse, Fort Lauderdale, Florida 33301, and by U.S. Mail to E. Rodriguez at Hahn & Bailey, 200 S.E. 6th St., Suite 200, Ft. Lauderdale, Florida 33301, L. Foren and C. Jasik at Official Reporting, 524 S. Andrews Ave., Suite 102, Ft. Lauderdale, Florida 33301, D. Pearlman at Viva Voce, 521 S. Andrews Ave., Suite 8, Ft. Lauderdale, Florida and the Department of Legal Affairs, 1655 Palm Beach Lakes Blvd., 3rd Floor, West Palm Beach, Florida 33401-2299, this 24th day of April, 2001.

ALAN H. SCHREIBER
Public Defender



Debra A. Bookout, 968196
Assistant Public Defender
201 S.E. 6th Street, Rm 3872
Ft. Lauderdale, FL 33301
Counsel for Defendant/Appellant
(954) 831-8514

REPORTER'S ACKNOWLEDGMENT

1. The foregoing designation was served on _____ and received _____.
2. Satisfactory arrangements have() have not() been made for payment of the transcript costs. These financial arrangements were completed on _____.
3. Number of trial or hearing days _____.
4. Estimated number of transcript pages _____.
- 5a. The transcript will be available within thirty (30) days of service of the foregoing designation and will be filed on or before the ____ day of _____, 19____. **OR:**
- 5b. For the following reason(s) the court reporter requests an extension of time of _____ days for preparation of the transcript(s) which will be filed on or before _____;

6. Completion and filing of this acknowledgment by the court reporter

constitutes submission to the jurisdiction of the court for all purposes in connection with these appellate proceedings.

7. The undersigned court reporter certifies that the foregoing is true and correct and that a copy has been furnished by mail() hand delivery(), this _____ day of _____, 19____, to each of the parties or their counsel.

Court Reporter
Address:

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

April 30, 2001

CASE NO.: 4D00-4484

L.T. No. : 98-5739 CF10A

Ernesto Behrens

v.

State Of Florida

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that appellant's motion filed April 20, 2001, to relinquish jurisdiction is granted. Jurisdiction is hereby relinquished to the trial court for twenty (20) days from the date of this order.

The appellant shall forward to this court a copy of any order issued during relinquishment. It is further ordered that the appellant shall monitor this proceeding in the trial court. If further time is needed beyond this relinquishment period, it shall be the duty of appellant to request an extension of time by proper motion to this court. This case shall proceed in this court upon expiration of relinquishment unless otherwise notified in writing by the parties.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

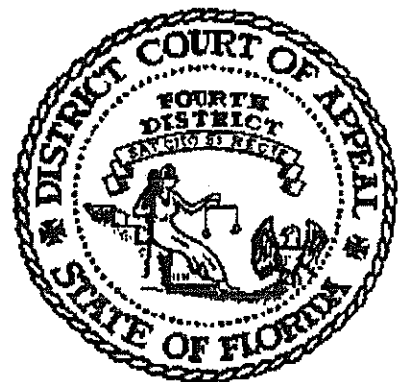
Howard Forman, Clerk
Hon. Alfred J. Horowitz

Kayo E. Morgan

Attorney General-W.P.B.

ch

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal



IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 98-5739CF10A
JUDGE: ALFRED J. HOROWITZ

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO BEHRENS,

Defendant.

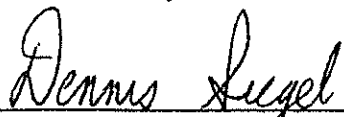
NOTICE OF FILING OF TRANSCRIPT

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and respectfully notifies this Court and defense counsel that the State of Florida is filing the transcript of the July 10, 2000, hearing in this matter before the Honorable Alfred J. Horowitz, Circuit Court Judge, with the Clerk of the Circuit Court.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/hand delivery this 3 day of May, 2001, to: Debra Bookout, ESQ., Assistant Public Defender, Broward County Courthouse, and Kayo E. Morgan, Esq., 432 N.E. 3rd Avenue, Fort Lauderdale, Florida 33301

MICHAEL J. SATZ
State Attorney

By:


DENNIS SIEGEL, ESQ.
Assistant State Attorney
Florida Bar #258131
201 S.E. Sixth Street, Suite 568
Fort Lauderdale, Florida 33301
(954) 831-6933
FAX: (954) 831-6936

301

RECEIVED

270 AUG -1 AM 7:52

STATE ATTORNEY
17TH JUDICIAL CIRCUIT
FORT LAUDERDALE

518; Fort Lauderdale, Florida.

the Broward County Courthouse, 201 S.E. 6th Street, Room

the Honorable ALFRED J. HOROWITZ, Circuit Court Judge, in

The above-entitled cause came on for hearing before

8:47 A.M. - 9:10 A.M.

July 10, 2000

Fort Lauderdale, Florida

COPY

STATE OF FLORIDA
Plaintiff,
-vs-
ERNESTO BEHRENS,
Defendant.

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA
CASE NO. 98-005739CF10A

Sb
D.S.

1 APPEARANCES:

2
3 DENNIS SIEGEL, ASSISTANT STATE ATTORNEY
4 By: DENNIS SIEGEL, ESQ.
5 On behalf of the State of Florida.

6 TY TERRELL, P.A.
7 By: TY TERRELL, ESQ.
8 On behalf of the Defendant.

9 ANDREA SHELOWITZ, P.A.
10 By: ANDREA SHELOWITZ, ESQ.
11 On behalf of the Defendant.
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1 THEREUPON, the following proceedings were had:

2 MR. SIEGEL: How are you, Judge? This is a transfer
3 from Judge Rothschild.

4 THE COURT: He spoke to me about this case. This is
5 the one where there's a speedy trial issue?

6 MR. SIEGEL: Right. Judge, there is a speedy trial
7 demand that we will be talking to Judge Rothschild about --
8 was basically picking a jury, and not swearing them within
9 the next two or three weeks, and then have the trial
10 commence like September 10th or something like that.

11 MR. TERRELL: Something to that, Judge. We filed a
12 speedy. I think there's a couple of issues as far as dates
13 that can and can't be tried as far as when attorneys are
14 available. We're kind of at your disposal, Judge.

15 When I last spoke to Judge Rothschild, he didn't
16 know if you were going to just pick the jury or if you were
17 going to actually try the case or hear the motions. We're
18 kind of in limbo-

19 THE COURT: (Interposing) What kind of motions are
20 they?

21 MR. SIEGEL: It's a Williams Rule Motion.

22 THE COURT: I thought he was going to hear that?

23 MR. SIEGEL: We were there last Thursday or Friday,
24 I forget which. He was kind of saying it's kind of up in
25 the air, kind of what you wanted to do is what he kind of

1 indicated. He said he didn't want to leave you with
2 garbage, so he would clean up the case before you took it,
3 but he was going to talk to you about that.

4 THE COURT: This is regarding Mr. Behrens?

5 MR. SIEGEL: Yes, Judge.

6 THE COURT: He speaks English?

7 MR. SIEGEL: Yes.

8 THE COURT: How long will it take to try the case?

9 MR. SIEGEL: It will probably take five, six days or
10 so.

11 THE COURT: Well, I guess, the question is:

12 It's Judge Rothschild's case. It sounds like the
13 immediate concern is just getting a jury picked?

14 MR. SIEGEL: Correct.

15 THE COURT: So I can go ahead and do that, and then
16 -- and I can set it for a date in September, and I think if
17 Judge Rothschild wants to try the case, it's his case, he
18 can try it. If he wants me to try it, I'll try it.

19 What's happening is -- and the reason I'm a little
20 hesitant is I'm not getting -- it's like a division that's
21 getting slowly filled. I don't know how filled I'll be in
22 September, I guess, is what it comes down to, but I
23 certainly don't mind picking the jury. When did you want to
24 do that?

25 MR. TERRELL: If I had my preference, Judge, between

1 the 27th of July -- no, this 24th is a Monday.

2 THE COURT: I'll be out of town. I leave town the
3 25th of July for a couple weeks. Why can't we pick the jury
4 before that?

5 MR. SIEGEL: Judge, we can't. Ms. Shelowitz is
6 going to be out of town.

7 MS. SHELOWITZ: The 14th to the 21st, but we knew
8 that might happen.

9 THE COURT: So why can't we pick the jury this week
10 if we had to?

11 MS. SHELOWITZ: Judge, just for the record, and we
12 have all discussed this, that I think we also talked about
13 it in Rothschild that the Defendant does object to his trial
14 being delayed once a jury is sworn. He wants his case to go
15 from jury right into the actual trial itself.

16 I believe that the problem with August is I believe
17 that the State had a problem with August, which is why the
18 delay until September, but I just want to do make a record
19 for Mr. Behrens that he wants his trial all at once. That's
20 the purpose for the demand.

21 THE COURT: Well, if he wants to waive his speedy
22 trial, then that can take the edge off and they can pick a
23 jury and do everything in September or whenever the -- the
24 only reason it's here from my understanding is because of
25 the speedy trial issue.

1 If he wanted to waive his right to speedy trial,
2 then it goes back to Judge Rothschild, and then he'll
3 schedule it -- I assume, and I could be wrong, but I assume
4 he'll schedule it in September and we'll get the case tried.

5 MS. SHELOWITZ: He wants his trial now, I think is
6 what he's-

7 MR. TYRELL: (Interposing) Right. Actually, that's
8 what prompted the demand originally, Judge, is
9 Judge Rothschild has got a couple of Murder 1 cases going.
10 I think he's booked all the way to October, and that's what
11 prompted the speedy a couple of weeks ago.

12 I believe, he's been in custody almost three years
13 now. He wants to move it forward as quick as possible.

14 THE COURT: Well, again, all I can do is I can pick
15 the jury this week. From what you're telling me, you're
16 going to be out of town, Ms. Shelowitz, after the 14th, so I
17 can pick the jury this week and go from there. I don't know
18 what else to suggest, otherwise it will have to go back to
19 Judge Rothschild and he'll have to do -- you said August is
20 no good for whatever reason?

21 MR. SIEGEL: Right. Judge, there is a problem with
22 a witness as well as some various vacation plans, with the
23 primary problem is with the witness.

24 THE COURT: So the only time available for me, and
25 working in Ms. Shelowitz's schedule, is this week.

1 MR. TERRELL: Okay.

2 THE COURT: I would pick the jury -- can we do it
3 Friday?

4 MS. SHELOWITZ: I won't be here Friday, but Judge,
5 we planned that if Mr. Terrell has to pick the jury, that's
6 what we'll have to do to make sure that Mr. Behrens gets
7 this trial started. I don't want to make it difficult.

8 THE COURT: I would need -- this is a life felony,
9 so I would need 30 people. I think they have to special
10 order those, so why don't we set aside this Friday to pick
11 Mr. Behrens' jury?

12 MR. TERRELL: Judge, is it possible we can start it
13 on Thursday?

14 THE COURT: It's possible. It's going to depend on
15 how my week plays out. Part of the problem that I'm having
16 is I don't have a docket clerk, and they're treating this
17 division initially as a Strike Force division, so I'm
18 getting cases in here on a daily basis that I don't know
19 anything about, so it's hard for me to really say how the
20 week plays out. I don't know.

21 The answer is, yes, it's possible. If you'll just
22 be flexible with me, I could let you know later in the week.

23 MR. SIEGEL: Judge, again, I'm more than happy to be
24 flexible. My only problem is I've got a hearing on the
25 West Palm Beach on an executive assignment on Thursday. If

1 the Court's going to do it on Thursday, that's fine.

2 THE COURT: What time is your hearings?

3 MR. SIEGEL: It's a 1:00. I just need to call the
4 judge there. I might need it before that, because it's a
5 situation where the case was tried three years ago, and then
6 they have to do an inquiry of the jurors. They're trying to
7 summon the jurors back, so they've already been notified to
8 be there, so I'm not sure if they can cancel in time.

9 THE COURT: Is there somebody that can cover it for
10 you?

11 MR. SIEGEL: Because they -- no, there's only one
12 person designated to do it.

13 THE COURT: Sounds like, I mean, I can start it at
14 9:30, but I don't know that we can get a jury picked in the
15 morning. We might -- I don't know if that gives you enough
16 time to really run up to West Palm or if you can. It sounds
17 like Friday is going to be the best chance.

18 MR. SIEGEL: Given that, Thursday, the thing that I
19 have, I think for me Friday would be the best thing.

20 THE COURT: I'll tell you what, why don't we just --
21 why don't we come back here Wednesday morning, or even
22 better yet, let's say, Wednesday at 1:30, and then I'll know
23 exactly where I am running into Thursday.

24 Let's just set Mr. Behrens for a status on 1:30 on
25 Wednesday, and we'll have a good feel, and if I should learn

1 something before then, I'll call you.

2 MR. SIEGEL: Judge, as far as the Williams Rule

3 hearing, do you want us to go back to Judge Rothschild about

4 that?

5 THE COURT: Preferably, and ask him for sure if he

6 wants to try the case or if he wants me to.

7 MR. SIEGEL: Judge, I think Mr. Behrens' defense

8 counsel were correct that the Judge had strongly indicated

9 to us several times that he had special set-

10 THE COURT: (Interposing) And I'll try the case. I

11 mean, ideally, if he can handle the preliminary motions,

12 that would be wonderful. If he feels like he would rather I

13 do it because I'm doing the trial, I don't mind doing that,

14 but talk to him about it. Whatever he wants, I'll do.

15 MR. SIEGEL: Have a good day, Judge.

16 THE COURT: Thank you. I'll see you Wednesday.

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COURT CERTIFICATE

STATE OF FLORIDA
COUNTY OF BROWARD

I, LAURA A. FOREN, Shorthand Reporter, certify that
I was authorized to and did stenographically report the
foregoing proceedings and that the transcript is a true
record.

Dated this 25th day of July, 2000.

Laura A. Foren
Laura A. Foren
Certified Shorthand Reporter

Appeal Clerk

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

Ernesto Behrens,
Defendant/Appellant,

vs.

STATE OF FLORIDA,
Plaintiff/Appellee.

CASE NO.: 98-5739CF10A

JUDGE: Horowitz

Additional
DIRECTIONS TO THE CLERK

FILED
CLERK CIRCUIT COURT
BROWARD COUNTY, FLORIDA

2001 MAY -8 AM 2:32

APPEALS

Defendant/Appellant, Ernesto Behrens, directs the clerk to include the following items in the record on appeal:

ITEM

DATE FILED (ON OR ABOUT)

1. Transcript of hearing held 7/10/2000

I HEREBY CERTIFY that a copy of the foregoing Additional Directions to Clerk was delivered by interoffice mail to the Office of the State Attorney, Broward County Courthouse, Fort Lauderdale, Florida 33301, and by U.S. Mail to the Department of Legal Affairs, 1655 Palm Beach Lakes Blvd., 3rd Floor, West Palm Beach, Florida 33401-2299, this 8th day of May, 2001.

ALAN H. SCHREIBER
Public Defender

Debra A. Bookout

Debra A. Bookout, 968196
Assistant Public Defender
201 S. E. 6th Street
Broward County Courthouse, Rm 3872
Fort Lauderdale, Florida 33301
(305)831-8514
Attorney for Defendant/Appellant

EL

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

June 7, 2001

CASE NO.: 4D00-4484
L.T. No. : 98-5739 CF10A

Ernesto Behrens

v.

State Of Florida

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that the clerk's motion filed June 5, 2001, for extension of time is granted, and the time for the clerk of the circuit court to prepare the record on appeal and serve the index thereto is hereby extended thirty (30) days from the date of this order.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

State Attorney- Brow.
Public Defender-Brow.
Attorney General-W.P.B.

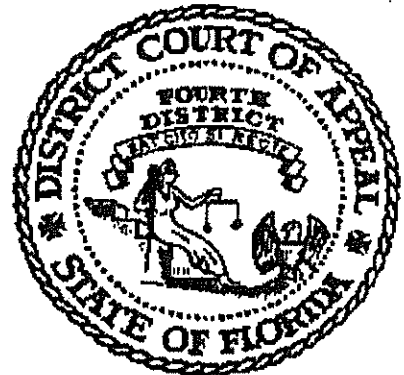
Howard Forman, Clerk
Kayo E. Morgan

James S. Lewis
Public Defender-P.B.

FILED FOR RECORD
CLERK OF CIRCUIT COURT
BROWARD COUNTY, FLA.
JUN - 8 PM 3:26

kb

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal



CR

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

July 6, 2001

CASE NO.: 4D00-4484
L.T. No. : 98-5739 CF10A

Ernesto Behrens

v. State Of Florida

Appellant / Petitioner(s),

Appellee / Respondent(s)

BY ORDER OF THE COURT:

The court reporter, Erlinda Rodriguez, having failed to file the transcript in accordance with this court's order of February 9, 2001, is ordered not to appear in any further proceedings or depositions until the transcript is filed. The transcript shall be filed by July 27, 2001. The reporter may be released from this provision by filing a receipt signed by the Clerk acknowledging the filing of the transcript and delivering the same to the office of Judge Paul L. Backman, Administrative Judge, Circuit Criminal Division, who may notify the judges of the lifting of this order.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

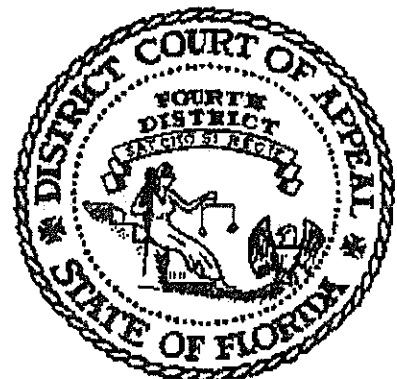
Williams & Hahn, Inc.
Howard Forman, Clerk
Public Defender-Brow.
Hon. Paul L. Backman

Erlinda Rodriguez
James S. Lewis
Kayo E. Morgan
Hon. Alfred J. Horowitz

State Attorney- Brow.
Public Defender-P.B.
Attorney General-W.P.B.

ch

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

August 15, 2001

CASE NO.: 4D00-4484
L.T. No. : 98-5739 CF10A

Ernesto Behrens

v. State Of Florida

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

This court appoints Judge Paul Backman to hold such hearings and enter such orders as are necessary to complete the transcript in this case within 45 days (appeal filed December 5, 2000).

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

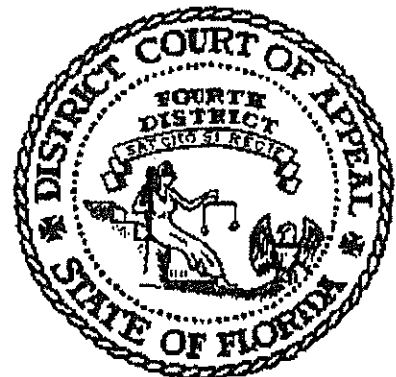
Williams & Hahn, Inc.
Howard Forman, Clerk
Public Defender-Brow.
Hon. Paul L. Backman

Erlinda Rodriguez
James S. Lewis
Kayo E. Morgan
Hon. Alfred J. Horowitz

State Attorney- Brow.
Public Defender-P.B.
Attorney General-W.P.B.

ch

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal



ATTORNEY: APR 03 1998

ADDRESS:

ATTORNEY:

ADDRESS:

ATTORNEY:

ADDRESS:

COPY OF INFORMATION/PC/INDICTMENT TO ATTORNEY ON:

APR 03 1998

DEF. ALLOWED

TO FILE MOTIONS.

MAGISTRATE HEARING HELD

PROBABLE CAUSE: FOUND NOT FOUND

NOTICE OF ARRAIGNMENT SENT TO:

DEFT

BOND CO.

C/REL

OTHER

APR 03 1998

FILE DEF'S OATH OF INDIGENCY & ORDER

APPOINTING P.D. OFFICE

\$40 PD APPLICATION FEE IMPOSED / WAIVED

MAY 14 1998

DEFENSE UNIL. GRANTED 111 C.R. m o chon rd

MAY 26 1998

Donna L. Vassello
Court Reporter

New Dates Set

FILE NOTICE TO DECLARE DEFENDANT
AN HABITUAL OFFENDER.

File Order Transferring Case Relinquish
Accepting DIV Fm

JUN 11 1998

File Amended notice of assist PD Assgn
File Amended notice changing trial date to 7-9-98

JUN 25 1998

Reset Status 629-98 830am @ c/c Lisa Greenwell

JUN 29 1998

DEFENSE CONT. GRANTED 111 C.R. Pamela McCreedy

JUL 09 1998

CR: Linda Superior Delete. Motion taken

JUL 27 1998

DEFENSE CONT. GRANTED 111 C.R. Candy Pressac

8-07-98

File Appearance of attorney and Plea and
notice of Participation in Discovery

SEP 22 1998

DEFENSE CONT. GRANTED 111 C.R. Shelly Flaherty

OCT 19 1998

CR: Nicole Petrelak Dan & Dan for Tina

OCT 23 1998

10-19-98 When 10-30-98 @ 830AM #5750

NOV 10 1998

CR: Vivian Fox. Was a motion for DNA

Expert Granted

File Order DNA Expert with CAP of \$2000

CASE PROGRESS

- 18 1998 CR: Vivian Rock Set Special Status 12-18-98 @ 830
all V. Rock Set sp status 12-15, 1998 @ 830
JAN 15 1999 CR GEORGE CALDWELL Set Status Conference 4-30-99 @ 830
4-6-99 file M 1 to Withdraw charges of Dec 12
APR 9 1999 CR GEORGE CALDWELL Re: Motion WD as Atty
of Record Granted
File Order on Motion to WD
DEFT WILL REPRESENT HIMSELF as Atty
OF RECORD
File Order deft to submit a list of
witness to State Atty By 4-16-99
4-16-99 CR: Cynthia George Deft's motion Compel State's Discovery Moot
- Deft's motion to Dismiss Information Hrg Held
- State's Oral motion to strike motion Dismiss Info Gran
- Deft's motion to Dismiss for expiration of the Statute of
Limitation Defer Ruling
- File Motion to Compel State's Discovery
- File motion Dismiss Information
- File motion Dismiss for expiration of the statute of Limitation

FILE DEPOSITIONS:

DATE

NAME

3-10-99

Herbert Sacks

3-16-99

Priscilla V. Norton P.H.D.

APR 3 1999

CR GEORGE CALDWELL

Status Hrg Held
File Order Lays Motion to Dismiss over
to Ernesto Benveniste within 7 days

See 902# (2)

CASE PROGRESS

- (u) - File Order (def) Hiding as his own Ally
to submit all witness list no later
than 6-25-99 at the close of business
- File Order All Pretrial motions and
hearings to be heard by close of business
- File order def to Receive Transcript from
all court proceedings

3/15/00 Filed Label on Vol I. Put Remarks on Computer
as to Amend Cnt 3 to Cnt 2 & Cnt 1 is to stay the

same

DEFENSE CONT. GRANTED 1/1 C.R.

V. Pacific

07-18-00 File Notice of Hearing

08-4-00 Memorandum - Request for reconsideration of
defendant's assertion of his right to proceed to

FILE DEPOSITIONS:

DATE

NAME

8-2-00

Paula TURGEON-AK

CASE PROGRESS

NOV 12 1999 State Cont CR: Michelle Jewell (Jaw)
 NOV 30 1999 CR: Vivian Rock // hrg held State's
 Mtn to compel - Doctor present open
 court and provided copies - file copies (3)
 open court.
 correct court date to 1-14-00 @ 11 AM.
 Delete 1-28 C/call
 file order - Bro. County Commissioners to pay for
 undig. photos from SAO (Jaw)
 DEC 08 1999 CR: Diana Kelly // Arthur hearing
 Reset for 12-17-99 @ 2 pm
 DEC 17 1999 CR: Nicole Petriak // hrg held Def Mtn
 to set bond - Arthur hearing - denied file
 file hrg proceedings (Jaw)
 file order for Plantation PD to produce photos (Jaw)
 JAN 24 2000 DEFENSE CONT. GRANTED !!! C.R. Kathy Skubic
 Reset C/call w/ Def hrg Mtn to Dis

FILE DEPOSITIONS:

DATE

NAME

11-10-99 Leslie Sue Liberman

2/17/00 W/D Capias as to Cts II, III, IV as issued 3-17-98
 all counts disposed of (file w/d slip)
 Ct I Sex Battery Armed has been set at NB hold
 Ct II as recommended 6-16-99 to Burg/Dwell w/ Batter
 has been set at NB hold
 file order stating charges and bonds as of 2/17/00
 MAR 13 2000 CR: Deb Laubach // hrg held Def Mtn
 to be declared indif for costs - granted
 file order (Jaw)
 file Ntc of appearance
 3-21-00 D/C CR: Valerie Pacifico 320

NOV 12 2000 CR: Scott Simon // hrg held Def Mtn
 for costs & compel - granted def atty to provide
 order

CASE PROGRESS

ATTORNEY: _____

ADDRESS: _____

ATTORNEY: _____

ADDRESS: _____

ATTORNEY: _____

ADDRESS: _____

COPY OF INFORMATION/PC/INDICTMENT TO ATTORNEY ON: _____

_____ DEF. ALLOWED _____ TO FILE MOTIONS. _____

_____ MAGISTRATE HEARING HELD _____

_____ PROBABLE CAUSE: FOUND _____ NOT FOUND _____

_____ NOTICE OF ARRAIGNMENT SENT TO: _____

_____ DEFT _____ BOND CO. _____ C/REL _____ OTHER _____

6-9-00 File Order on motion for costs

6-9-00 File Order to Compel Production of Photograph No

6-7-00 File Amended witness list

6-7-00 File Del. Notice of Alibi

JUN 13 2000 C/R VALERIE PACIFICO - Hrg. Held - Def mot to Compel -

granted

JUN 23 2000 C/R VALERIE PACIFICO - Hrg held - Def mot to

Compel Discovery

Reset for Status 1-week

6/27/00 Status Conf. Held. Re: Defense Demands for

Speedy Trial. Demands filed 6/23/00

on Michelle Russell

JUN 30 2000 File SAO Mtn to compel

Status held CR: Debbie Hill

Reset to 7-500 @ 8:30A to hrg SAO Mtn

to compel (trial date to be set at that time)

JUN 30 2000 CR: DEBBIE HILL - Status Hrg held

Status motion is granted - SAO to provide on

this file to be transferred to Judge Horowitz

for trial mon. 7/10/00 @ 8:30 AM

JUL 10 2000 C/R C Porell // st hrg hld // Williams Rule & Jury selection 8/8/00

JUL 18 2000 Hrg held - Status mot

to Compel -

Order granting in part Status Motion

JUL 21 2000 C/R D Pearlman // st hld Williams Rule set 10:00 am

AUG 09 2000 C/R E Rodriguez // Williams Rule Hld 1st day Trial

F.I.E. Def mot for reconsideration // Denied

JUL 10 2000 C/R E Rodriguez // 2nd day Trial

18-5139

IT IS UNLAWFUL TO REMOVE COURT FILES OR ANY
OF THEIR CONTENTS FROM THE CLERK'S OFFICE
WITHOUT LEAVE OF THE COURT. (F.S. 28.13)

CASE PROGRESS

Jury NOT SWORN Ct in recess until 9/11/00
Trial TO Continue 9-11-00 1:30 pm
JAN 24 00 FILE ORDER: DEFENSE MOTION FOR CONTINUANCE - C.R.
AUG 20, 2000 My C Jasil 11 DEF mot for speedy expiration of
✓ File order granting States motion to Strike
✓ File order for defendant to be shaved & Dress
01-28-00 File Notice of Hearing
08-02-00 State's Supplemental Discovery
06-28-00 Re File Notice of Deposition

FILE DEPOSITIONS:

DATE

NAME

6-7-00

Det. William Tighe

CASE PROGRESS

ATTORNEY: NOV 13 2000 P.D. appointed for appeals purposes

ADDRESS: _____

ATTORNEY: _____

ADDRESS: _____

ATTORNEY: _____

ADDRESS: _____

COPY OF INFORMATION/PC/INDICTMENT TO ATTORNEY ON: _____

_____ DEF. ALLOWED _____ TO FILE MOTIONS. _____

_____ MAGISTRATE HEARING HELD _____

_____ PROBABLE CAUSE: FOUND _____ NOT FOUND _____

_____ NOTICE OF ARRAIGNMENT SENT TO: _____

_____ DEFT _____ BOND CO. _____ C/REL _____ OTHER _____

SEP 29 2000 @ Mr Jasik Def mot & Sentencing Reset R0

NOV 02 2000 clk E Jasik Def Mot 3.850 to continue 11/13/00 9⁰⁰

10/5/00 file Request for Judicial Notice llw

10/10/00 file memorandum of law in support of Mot. in limine llw

10/13/00 file order Denying St's m. in limine llw

NOV 02 2000 clk E Rodriguez // Several Motions & Hrg Hld R0 // Sentencing

✓ 3.850 motion Denied

✓ Def mot New Trial // Denied

✓ States Mot For Judicial Notice // Granted

✓ File Hrg Proceedings

✓ States Mot TO upward Depart Granted

✓ File ORDER adjudicating DEFT to be a sexual Predator

✓ FILE AND RECORD JUDGMENT OR BK _____ PG. _____

✓ FILE RESTITUTION ORDER

✓ File Vic Info

FILE SENTENCING GUIDELINE SCORESHEET

FILE SENTENCE AND COMMITMENT

✓ File Exhibit List from Motions

✓ FILE DEFT'S DATE OF EMERGENCY & ORDER

APPROPRIATE FOR APPEALS

✓ File ORDER Keeping deft in B.C.J until & date

✓ File Amend copy for new trial

10-2-00 file order for Reimb Costs

10-27-00 file order for Reimb Costs

10-27-00 file my Swed Hrg on Jury must conduct

10-26-00 file order fixing comp of Expert Witness

10-30-00 file notice of Hrg

11-18-00 file order adjudicating Deft to be a sexual Predator

323

CASE PROGRESS

Sept 11 C/R C Jasik 3rd day Trial ^{RM}

SEP 22 2000 C/R C Jasik 4th day Trial

- File Mot in limine to exclude Testimony & Evidence

✓ SEE Trial Notes

✓ File ORDER TO Prepare Transcript

- File Transcript

9-14- ✓ VERDICTS C/R C Jasik 6th day Trial ^{RM}

✓ File ORDER Remanding Def

- File TRIAL PROCEEDINGS

✓ File Exhibit Worksheet

✓ File exhibit list

✓ File PSI ORDER

9-20-00 File states Mot Impose Sentence upward departure

9-13- C/R C Jasik 5th day Trial ^{RM}

~~9-11~~ 12/5/00 Order finding def. Indigent for purposes of Appeal.

FILE DEPOSITIONS:

DATE

NAME

12/6/00

Order for reimbursement where defendant has been declared Indigent for costs

1/1/00

Order granting joint stipulation for substitution of counsel.

DEC 08 2000

C/R V Suarez RESET MOTIONS 12/15/00 1030

DEC 15 2000

C/R E Rodriguez // DEF MOT for new Trial // Denied File

APR 06 2001

C/R E Rodriguez // motion Reset 4/17/01 900

File order not to transport Def^{ts}

APR 17 2001

C/R E Rodriguez // motions to continue To be set by atty

3-20-01

File order returning Def to court.

APR 05 2001

C/R E Rodriguez // cap // Deleted from Docket atty to Reset

✓ mot TO correct not hld ^{RM}

[X] 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY
[] IN THE COUNTY COURT IN AND FOR BROWARD COUNTY

CERTIFICATE OF THE CLERK

DIVISION:
CRIMINAL

CASE NUMBER:

98-5739 CF10A

APPEAL NUMBER:

00-4484

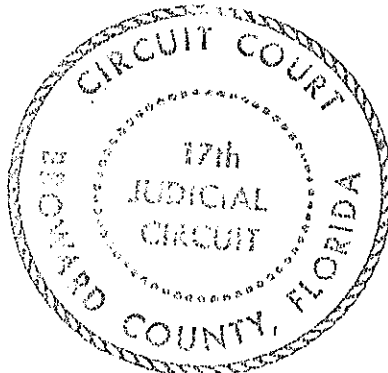
STATE OF FLORIDA
COUNTY OF BROWARD COUNTY

I, HOWARD C. FORMAN, CLERK OF THE CIRCUIT COURT, 17TH JUDICIAL CIRCUIT FOR THE COUNTY OF BROWARD, STATE OF FLORIDA, DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1 TO 324 INCLUSIVE CONTAIN A CORRECT TRANSCRIPT OF THE RECORD OF THE JUDGMENT IN THE CASE OF **STATE OF FLORIDA VS ERNESTO BEHRENS**, AND A TRUE AND CORRECT RECITAL AND COPY OF ALL SUCH PAPERS AND PROCEEDINGS IN SAID CAUSE AS APPEARS FROM THE RECORDS AND FILES OF MY OFFICE THAT HAVE BEEN DIRECTED TO BE INCLUDED IN SAID RECORD BY THE DIRECTIONS FURNISHED ME.

1 1 15
THRU
VOLUME 22 PAGE 1 TO 192 INCLUSIVE EMBRACE THE
TRANSCRIBED NOTES OF THE REPORTER AS MADE AT THE TRIAL AND
CERTIFIED TO ME BY THEM.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND
AFFIXED THE SEAL OF SAID COURT THIS 11 DAY OF OCT. , 2001

HOWARD C. FORMAN, CLERK
CIRCUIT COURT
BROWARD COUNTY, FLORIDA



BY 
DEPUTY CLERK